

Ellys, Anthony

Tracts on the liberty spiritual and temporal of protestants in England

London 1767

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T R A C T S
ON THE
L I B E R T Y,
SPIRITUAL and TEMPORAL,
OF
PROTESTANTS IN ENGLAND,

ADDRESSED TO
J. N. Esq; at AIX-LA-CHAPELLE.

I N T W O P A R T S.

B Y
A N T H O N Y E L L Y S, D. D.
LATE LORD BISHOP OF ST. DAVID'S.

A N E W E D I T I O N.

L O N D O N :

Printed for J. WHISTON at Boyle's Head in Fleet-street ;
B. WHITE at Horace's Head in Fleet-street ; and
S. HOOPER at the East Corner of the New Church in the Strand.

MDCCLXVII.

T R A C T
 L I B R A R Y
 SPIRITUAL AND TEMPORAL
 PROTESTANTS IN ENGLAND
 ADDRESSED TO
 J. N. B. at ALXANDRIA
 IN TWO PARTS
 ANTHONY ELLIS
 LATE LORD BISHOP OF ST. DAVID

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MDCCLXXII

T O T H E
K I N G.

S I R,

TH E following Tracts, written by Dr. Ellys, late Lord Bishop of St. David's, are humbly laid at your Majesty's feet.

The subject of this first Part is true Religion and Spiritual Liberty; both which have been recovered to this kingdom, by the animated endeavours of Your royal ancestors; have been hitherto preserved in it by their wisdom and policy; and, we trust, will be transmitted to latest posterity, by Your Majesty's favour and protection.

You will see in them, Sir, the principles upon which the Kings of England have asserted the Supremacy over the church in their dominions; the meaning of that word *Supremacy* declared by law; their right, by that prerogative, to make establishments in it; the utility of them when made; and the equity and prudence of the legislature not to force the consciences of those, who think they cannot comply with the terms of them. And as this separation would necessarily produce opposition, Your Majesty's prerogative and ecclesiastical authority, in this case, is fully defended against the principal objections of the adversaries to it, and the several steps taken by the Sovereign, to make that establishment of the Church conducive to the welfare of the State, fairly vindicated.

To the exercise of this power, under God, it is that we owe our Spiritual Liberty: it is this we hope for ever to enjoy under the piety, the wisdom, the firmness of You, Sir, *the Defender of our Faith*: and we have reason to hope, from the brightest dawn that ever rose upon this Church and Nation, that the light and warmth
of

DEDICATION. . v

of Your Majesty's kind influences will ever shine upon, ever cherish, your loyal Church of England. In this hope and belief, Sir, these Papers are presented to your Majesty, with all humbleness, by

Your Majesty's most dutiful

And faithful subjects,

The EDITORS.

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R E A D E R

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P R I N T E D
BY
J. B. ROBERTS
AT THE
PRINTING OFFICE OF
J. B. ROBERTS
IN THE
CITY OF
NEW YORK

T H E
E D I T O R S
T O T H E
R E A D E R.

IT is not thought necessary to give any account of the life of the Author of these Tracts. As we are concerned only about his literary qualifications, these will best be discovered in the following Papers: the greatest part of which were left by him, transcribed and ready for the press; but that great diffidence that often attends men of the most extensive understanding, prevented him, from time to time, from coming to a resolution of publishing them, though often solicited by his friends, who had seen them, and others of his acquaintance, who were so fully satisfied of his great and rare abilities, and knowledge of
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our Civil and Ecclesiastical constitution, as to believe no man of his time had better considered that subject, or was more capable of shewing it in a good light.

He was not only eminent for his fine parts, extensive knowledge, and sound judgment, jewels truly valuable in themselves, but they were set in him to the highest advantage, by a heart so overflowing with benevolence and candour, as never even to conceive terms of acrimony or reproach towards the opinions or persons of those who differed from him. This Christian temper of his is discoverable in all the Parts of these Tracts that are taken up in controversy; for he always thought a person, though on the right side of the question, with principles of persecution, to be a worse man than he that was on the wrong.

These dispositions engaged him in defence of toleration, and all those indulgences that he thought ought to be allowed to tender consciences: but when that liberty was once granted (as it was by law to our Dissenters) he saw no necessity it should be attended with Civil power, which might endanger the Ecclesiastical establishment; and if he has shewed, beyond all doubt, the right of private judgment in matters of religion, and a liberty of publickly worshipping God, in consequence of that judgment; he has also as undeniably proved the necessity of a Test, as a just security to the Established Church, and a proper guard to
the

the welfare of the State; for he was persuaded, that human laws cannot bind conscience, but they may exclude those from civil power, who profess a private conscience repugnant to the public conscience of the state: all which he has managed with such gentle, charitable, and Christian liberty, as meant only to answer the arguments, not inflame the resentments of the opponents.

In treating of Spiritual Liberty, it was almost unavoidable to enter, with any propriety, into the subject, without laying open the weakness of the Romish arguments in defence of their doctrine and discipline, particularly Transubstantiation, and the Infallibility of their church; which, though they have been sufficiently confuted already by other able men, yet our right reverend Prelate has given a new turn to old arguments, and answered those of archbishop Fenelon, and the celebrated Bossuet, bishop of Meaux, with regard to the ignorance of some men, and invincible error of others; in which case he was persuaded, upon the principles of the Gospel, and the dictates of right reason, that such persons, in proportion to their faith and obedience in sincerity, will meet with acceptance from the mercy of an equitable and just judge, without requiring the directions of an infallible guide.

In the Tract concerning Ecclesiastical Supremacy vested in the Crown, it will appear, that the clamour raised

against it as sacrilegious and unjustifiable by the Romanists, and maintained by Protestant Dissenters even to this day, proceeds only from an inattention to the laws by which it is restored and united to the crown, as an ancient right and jurisdiction belonging to it.

Here the reader will see, at one view, all the laws relative to this subject, from the 26 Hen. VIII. to the 13 Eliz. which confirmed the thirty-nine articles of the Church of England, the 37th of which speaks of the ecclesiastical power of the civil magistrate; by all which it was either expressly or virtually declared, that they did not give the Sovereign any power to preach, and administer sacraments, ordain, &c. but only to visit, repress, and restrain, with the civil sword, all errors, heresies, &c. Upon which the Oath of Supremacy, so much objected to in the beginning of the reign of Queen Elizabeth, is defended, as meaning only to acknowledge a supremacy of power in our sovereigns, *in opposition to any foreign Prince, Prelate, State, or Potentate, and that power, only directive, coercive, and merely political*, without any the least claim to any exercise of it, that was spiritual—a distinction so plain and so obvious, that one would incline to think the learned adversaries to it were not willing, rather than not able to understand it.

If the Right Reverend Author had lived, the Publick would have received these Papers with more satisfaction from himself—But as things have happened, those of his acquaintance, who knew of these Tracts, desired they might not die with him; and requested his executrix, that she would not deprive the world (too much interested in the loss of him on other accounts) of the fruit of those labours that had engaged the greatest part of his life. They were accordingly given into our hands to put to the Press; and all the little merit we claim is, that we have executed that trust with Fidelity.

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J. N. Eldon, at AIX LA CHAPELLE.

In reading the history of ages past, one cannot but observe how frail the human establishments are that human wisdom and power can make. The great empires of those times have all, in their turns, either sunk by degrees, or by very sudden and violent shocks have been broken to pieces. Republics, that once enjoyed ample liberty, and seemed to have power enough to preserve it, have since, been reduced under abject servitude. Countries, that formerly shined with the light of the gospel of Christ, are now quite involved in the darkness of ignorance or superstition. And cities, that by their extended commerce were raised to great heights of wealth and power, and filled with most beautiful and magnificent works of art, have been so destroyed, that their poor remains are now hardly to be found.

Upon

A N
T O

INTRODUCTION, &c.

J. N. Esquire, at AIX LA CHAPELLE.

IN reading the history of ages past, one cannot but observe how frail the firmest establishments are that human wisdom and power can make. The great empires of those times have all, in their turns, either sunk by degrees, or by very sudden and violent shocks have been broken to pieces. Republics, that once enjoyed ample liberty, and seemed to have power enough to preserve it, have, since, been reduced under abject servitude. Countries, that formerly shined with the light of the gospel of Christ, are now quite involved in the darkness of ignorance or superstition. And cities, that by their extended commerce were raised to great heights of wealth and power, and filled with most beautiful and magnificent works of art, have been so destroyed, that their poor remains are now hardly to be found.

Upon

Upon this view of things, I will not presume to make any judgment for how long a time the public constitution and liberty in England are likely to remain in their present condition. This will depend on our national conduct, and on the measures which the Providence of God shall see fit to take in the government of this part of the world; which measures are often founded on reasons much too high and of too great extent for our narrow views. But what changes soever may hereafter be made in our public constitution, in either of its parts, ecclesiastical or civil, one may safely affirm, that both of them are now founded in reason, and fitted to promote our attainment of happiness both in a future life and in the present: so that they deserve our utmost endeavours, at any hazard of our fortunes or our lives, to preserve them to ourselves, and transmit them as they are to our latest descendents.

For making out these points, against what I find the abbot of L** has been suggesting to you about them, these papers are designed. This gentleman has shewn not only great art in the management of the argument he has offered you, but more knowledge of both the parts of our constitution. Accordingly he has made some objections especially with regard to our church and the dissenters from it, which none of the Romanists, that I have met with, have used before.---However I hope, that, if these papers shall have the favour of your attention, they will be found to contain answers sufficient to all that he has objected.

The tracts in the first part, being upon liberty in spiritual affairs, begin with some questions relating to it, which, on account of their great importance to the welfare of mankind, and of several difficulties formed by the Romanists
and

and others about them, were proper to be treated at large and with care. The questions are,

First, Whether every man hath a right to judge, and on the whole to determine, for himself about all matters of religion.

Secondly, How far men ought to be permitted to worship God in public, according to their own judgment, even though it is erroneous. And,

Lastly, Whether in every country the sovereign * has a right, or is obliged to make and maintain a public establishment of some religion.

By thinking on these questions as treated here in a general way, you will be prepared to make a right judgment about other disputes between Protestants and the church of Rome, which are not mentioned in these previous questions. The increase of the Romish interest in Europe has been so great for these last hundred years, and is so likely to go farther, that it certainly is very necessary that the people of this nation should be acquainted at least with the chief arguments against that religion. Of these therefore you will here find some account; not a large one indeed, because none but things of the greatest moment have been selected, yet such a one as will, I hope, clearly shew that our ancestors were indispensably obliged to leave the communion of the church of Rome, and that we are as strictly bound to

* The word *sovereign* in these papers will signify the person or persons, in each country, invested with the supreme authority both legislative and executive.

continue that separation as long as the terms of her communion remain what they are.

The mischiefs this nation formerly suffered in its temporal interest by the authority and jurisdiction exercised here by the bishop of Rome, in spiritual affairs, or in order to them, are briefly represented, and reasons given for which that authority was very justly, as well as much for the national advantage, suppressed and abolished by our legislature.

The manner of settling the constitution of the church of England in the reign of Queen Elizabeth is afterwards observed, and considerations are offered to shew that whatever the case might then have been in some respects, yet the authority at present assumed, and the liberty allowed in things ecclesiastical by the legislature and government in England, may, if duly used, be very consistent with all the purposes of religion, while they are productive of the peace and welfare of the civil state.

The tracts in the latter part of these papers chiefly regard our civil liberty; and give some account of the advantages we enjoy, both as to the course of judicial proceedings in matters criminal and civil, and as to the rights of both houses of parliament. Of divers particulars that will be mentioned under these heads, you have, I suppose, a general notion; but you may not perhaps be sufficiently apprized at what times and by what steps these advantages have been obtained: and therefore on these points some observations are here made, which, though not intended to give an exact historical account of all transactions of that kind,

kind, will, possibly, afford you a tolerable view of the gradual improvements that have been made in our civil constitution. This is like an old oak * which has often been wounded, and on some occasions has felt the axe even at its roots; but yet has survived all those dangerous blows, and continues to yield both due protection and pleasing shade to all who are under it. To speak without a figure—the legal and free government transmitted to us through many ages, is not much impaired, or not beyond remedy in any of its parts, and in some respects has been even improved; a happiness enjoyed now by few, if by any other nations in Europe. For the constitutions of France and Spain and the two northern kingdoms of Sweden and Denmark, which were originally not much different from our own, have all been, since, changed much for the worse; and though one of the latter has a little while ago recovered its freedom, yet whether it will keep it for any long time seems not very clear.

On the causes to which the loss of liberty in those countries has been owing, and on the different dispositions of men and things, which, under the providence of God, have contributed to preserve the liberty of England, you will find some remarks; by considering which with the state of things now among us, from the sketch given of it in the last of these tracts, you will, perhaps, judge what

* Duris ut ilex tonsa bipennibus
Nigræ feraci frondis in Algido,
Per damna, per cædes, ab ipso
Ducit opes animumque ferro.

HORAT. CARM. lib. iv. ode iv.

ballance is at present in the national constitution; what turn it may probably take hereafter; how far the interests of the crown and the nobility may be affected with that turn; whether any part of the present establishment be going to decay; and what methods may probably be most effectual to support, repair, and preserve the whole. No English gentleman can justly be blamed for employing his thoughts on points that so nearly concern the welfare of his country. But all men of sense will easily see that they ought not to be too hasty in drawing or fixing on any conclusions about matters of such moment, and yet less in forming and acting upon schemes of much alteration in consequence of them. Our public constitution is too great an object to be surveyed, and well understood, in a little time. One may justly say of it, as Polybius did of that of Rome, that a more than ordinary attention is requisite to take an exact view of its distinguishing parts. And one may truly add, that it is yet more difficult to judge what effects will follow from making any alterations in a body consisting of parts so various, so antient, and so much dependent on each other.

On the whole, I hope that these tracts, though perhaps of less use to you than I could wish, yet will lead you to think closely on these subjects of importance, and so will contribute to your having such notions of liberty and of government, both spiritual and temporal, that, keeping yourself clear on the one hand from bigotry and superstition, and from an indifference to all things concerning religion on the other, you will firmly adhere to the gospel

gospel of Christ; at the same time bearing, in the true spirit of it, with those errors that arise from weakness or prejudice in any of our fellow-subjects; endeavouring with gentle applications to remove them, and aiming to support that constitution of the national church, by which the great ends of the Christian religion, and the welfare of the public, may best be attained.

With regard to the civil government, there is, from your natural probity of mind, and your large estate, great reason to hope that you will not be inclined either to servility or to licentiousness, will never act upon low corrupt views, nor from a spirit either of resentment, or of partiality, much less of faction; but will always retain a hearty loyalty to the King, with a just concern for the prerogative of the crown, while you are careful to maintain the rights and privileges of the subjects. I will only add farther, that if you do really as some Athenians*, it seems, did of old, judge freedom to be happiness, you ought not to be wanting in courage to preserve it.

These are the dispositions most to be desired in an English gentleman; whom they will render capable of being a good servant to the crown, and not make him less a true friend to his country. That in being such a one you may reflect with satisfaction upon your own conduct, may gain the esteem of the most valuable men, and may be in all

* ΤΟ ΕΥΔΑΙΜΟΝ ΤΟ ΕΛΕΥΘΕΡΟΝ, ΤΟΔΕ ΕΛΕΥΘΕΡΟΝ ΤΟ ΕΥΨΥΧΟΝ ΚΡΙΝΟΝΤΕΣ.

other circumstances happy; are wishes that come with great warmth from the heart of,

S I R,

Your most faithful

And obedient Servant,

ANTHONY ELLYS.

C O N T E N T S.

P A R T I.

Of SPIRITUAL LIBERTY.

T R A C T I.

*O*F the Right of Private Judgment in all Matters of Religion. Page 1

T R A C T II.

Of the Liberty of publickly worshiping God. 36

T R A C T III.

On the Liberty, as to Matters Ecclesiastical, when a Religion is publickly established. 78

A Plea for the Sacramental Test, &c. 110

T R A C T IV.

On the Liberty recovered to the People of England, by suppressing the Authority formerly exercised over this Realm by the Bishop of Rome. 172

T R A C T V.

An Answer to the Objections to the ill Use which, it is alledged, has been made of the Liberty we have gained, by having broke with the See of Rome. 211

T R A C T VI.

The Nature of Supremacy, in Matters Ecclesiastical, vested in the Crown. 245

T R A C T VII.

The Claim of some English Protestants to greater Liberty than they now enjoy. 270.

C O N T E N T S.

CONTENTS.

PART II.

Of TEMPORAL LIBERTY.

TRACT I.

Of the Liberty of the Subjects in Judicial Proceedings, as to Matters both Criminal and Civil. Page 281

TRACT II.

Of the Right and Manner of imposing Taxes; and of the other Privileges of the Parliament.

SECTION I.

Of the illegal Attempts of some of our antient Kings to levy Money without the Consent of Parliament. 327

SECT. II.

Those Methods of levying Money that were antiently deemed legal, are, at present, abolished; and that Power, with the Disposition of the Money raised, is vested in the Parliament. 350

SECT. III.

Of the Times for the Meeting of the Parliament, its Privileges, and the Order and Effect of its Proceedings. 359

SECT. IV.

Of the Number of small Burghs which send Members to Parliament, and the Means used to obviate that and other Inconveniencies. 388

TRACT III.

Of the Means whereby the free Constitutions of other Nations have been impaired, while that of England has been preserved and improved.

C O N T E N T S.

xxiii

SECTION I.

The Divisions and Animosities between the Nobility and the Commonalty were the chief Cause, which made several European Nations lose their Liberty. 402

SECT. II.

Of France and Spain. 406

SECT. III.

Of Denmark and Sweden. 427

SECT. IV.

The Commonalty of England had, from the Beginning, a great Spirit of Freedom, and many Circumstances of Advantage, as in other Respects, so even as to Trade. 437

SECT. V.

They were also upon better Terms of Agreement with the Nobility than most other Nations were; and the Power which the Nobility lost fell in a great measure to them. 444

SECT. VI.

After Henry the Eighth's Reign their Freedom was placed on a secure Bottom. 450

TRACT IV.

Of the Antiquities of the Commons in Parliament. 454

TRACT V.

Of the Royal Prerogative, and the Hereditary Right to the Crown of Britain.

SECTION I.

Of the Royal Prerogative, with regard to the making and providing for the Execution of the Laws. 471

SECT. II.

Of the Royal Prerogative and Dignity in other Respects. 481

SECT. III.

Of the Opposition made to King James II. at the Revolution. 492

I S E C T. IV.

Of the Antient Hereditary Right, and the Breach of it by the Settlement of the Crown which is in Force at present. 503

T R A C T VI.

Of the Dangers that may be incident to the present Establishment, and the Prospect there is of its Continuance.

S E C T I O N I.

Of the Dangers that may befall the Ecclesiastical Part of our Establishment, from Papists, Protestant Dissenters, and Infidels. 522

S E C T. II.

Of the Dangers that may be incident to the civil Part of this Establishment from among ourselves; either, 1st. From the undue Growth of the Regal Power; 2dly. From the Prevalence of the Antimonarchical Party; or, 3dly. From foreign Force, taking Advantage of Divisions among ourselves. 526

S E C T. III.

Of the Means to guard against these Dangers: (viz.) 1st. By Frugality; 2dly. By a due Respect to the Laws and Magistrates; and 3dly. By a hearty Concern for, and public Practice of, Religion. 545

T R A C T S

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ON THE

L I B E R T Y,

SPIRITUAL and TEMPORAL,

OF

PROTESTANTS in *ENGLAND*.

P A R T I.

SPIRITUAL LIBERTY.

T R A C T I.

Of the Right of Private Judgment in all Matters of Religion.

THE liberty enjoyed by English subjects in spiritual affairs is chiefly opposed to that servitude of mind, which all Christians are under, who live in communion with the church of Rome. Of the nature and evil effects of which servitude, meaning to give you a short account, I shall, first, observe how much, against reason and the holy scriptures, the members of that church are restrained from using their private judgment about any points of religious faith.

PART I.

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2 SPIRITUAL LIBERTY

HER doctrine concerning this matter is, that, in order to the safe direction of all men to that true faith, which is requisite to their eternal salvation, our Lord JESUS CHRIST preserves by his grace the catholic church from erring in any point of that necessary faith, and also confers upon her an absolute authority to determine all questions that arise concerning it: so that her decisions upon any such question (however contrary they may appear to the judgment of any private person, or particular church) ought all to be received with the fullest assent and submission in practice.

WE need not to prove that this doctrine is held by the church of Rome, or that her practice is suited to it: for both these facts are sufficiently known to the Christian world, of which a great part, allowing the doctrine to be true, professes to yield a submission to her dictates in all points of such faith, as being supposed to agree with those of the catholic church, as well in it's first ages, as in the present. But that this supposition is quite without ground, you will find by a number of instances given hereafter in the course of these tracts. The point now to be proved is, that, in the present state of the church of Rome, and of all other churches in communion with her, of which, and which only, the catholic church, in her judgment, consists, it is not possible, that either she, or any of them, can be invested by God with that absolute authority, to which she pretends, in all questions concerning religious faith. When this has been proved, some considerations of a different kind will be offered to shew, that, if any other church, independent on Rome, does now, or should hereafter, make a claim to this authority, there never can be any real ground from reason, or the holy scripture, sufficient to support it: so that, on the whole, the right of private judgment in every person will be firmly established.

IN the first place, against the church of Rome, and all other churches in communion with her, our argument may be shortly comprised in the following propositions: no church, which enjoins a thing to be believed that is really false, and, in consequence of it, a thing to be done, that is morally evil, can have authority from God to require of any persons an absolute submission to her judgment concerning all points of religious faith: but the church of Rome, and all

churches in communion with her, enjoin a thing to be believed, that is really false, and, in consequence of it, a thing to be done, that is morally evil. Therefore, neither the church of Rome, nor any other church in communion with her, can have authority from God to require of any persons an absolute submission to her judgment concerning all points of religious faith.

THE truth of the first of these propositions will appear by considering, that if a church, which acts as this proposition describes, be supposed to have from God such an absolute authority over the judgments of any persons, two things must follow.

ONE is, that all the persons, who acknowledge and submit to the authority of this church, must certainly be led both into the profession of erroneous faith, and into the ill practice which she enjoins. They cannot, with reason, make a stand against either. For when they are persuaded that God, who is perfectly wise and good, requires this their absolute submission to that church; their plain duty is, not to have any scruple at all about yielding it, drawn from a regard to the nature, or consequences of her injunctions, but firmly to believe, and constantly act as she enjoins. For her voice in this case is the voice of God, to which, whenever it is known to be such, an absolute, and even implicit, obedience is due from all rational creatures.

THE other consequence is, that (how gross soever the error may be, and however irrational and evil the practice, into which the persons concerned must be led) yet both of them would, on the present supposition, be really caused by God himself. For he would not only hinder these persons from using their private judgment, by which their fall into this error and ill practice might have been prevented, but as having, in general, required them to submit to the injunctions of that church, he would even oblige them to go into both. Since, therefore, their believing and acting in these cases, naturally would, and ought to be, the consequences of the authority now supposed to be granted by God, he would be, no doubt, the real cause of them. But this conduct on his part is not to be supposed: because the persons, obliged by his injunctions, would, in consequence of them, be under a necessity of acting in a way repugnant to the nature and reason of things, and to the relations, which, as his creatures, and rational agents, they bear to

God, and their acting so, would be morally evil. It would, therefore, be inconsistent with the holiness and goodness essential to God [a], were he to command, and be the cause of, their acting thus. By consequence, the supposition of his doing it is absurd, and ought not to be made. It is impossible that he should grant to any church, which acts in the way mentioned in the first proposition, an authority to require from any persons an absolute submission to her judgment, exclusive of their own, concerning all points of religious faith. Thus the first proposition in our argument appears to be true.

THE second proposition was, that both the church of Rome, and all other churches in communion with her, do expressly maintain, and strictly require all persons, who live in communion with them, to profess, as a necessary article of their faith, a thing not only false, but tending, naturally, to produce, and actually joined with, sinful practice: which charge will be made good, by considering, in the first place, the doctrine of that church relating to the wonderful transubstantiation, which she supposes to be wrought in the sacrament of the Lord's Supper, together with her practice of adoring the consecrated substance in that sacrament with the highest kind of religious worship. She publicly teaches, and requires all her members, under the pain of an anathema, to believe and profess, that, by virtue of the words of consecration pronounced by a priest upon the elements of bread and wine, they are, as to their substances, instantly changed; the bread into the body of our Lord Jesus Christ, and the wine into his blood; both which are the same that he had at the institution of this sacrament, and at his crucifixion.

HER arguments for this amazing doctrine, are taken from the words of our Lord Jesus Christ, when, after the celebration of the paschal supper, he (in breaking the bread, and giving it to his disciples) said, *Take, eat, this is my body* [b]. And, in giving to them afterwards the cup of wine, he said, *This is my blood of the new covenant which is shed for many for the remission of sins*. These words the Romanists understand in the literal sense, as being what is always to be followed in the scriptures, whenever there

[a] Plato Polit. lib. ii. Κακῶν δὲ αἰτίον φάναι Θεόν τινα γίνεσθαι, ἀγαθὸν διαμαχετέον παντὶ τρόπῳ.

[b] MATTHEW xxvi. 26--28.

are not necessary reasons for departing from it. We Protestants acknowledge this rule to be a good one, and are as little disposed, as the church of Rome, to have recourse, without reason, to figurative senses. But we cannot forbear admitting, that, sometimes, there is a necessity for it, and that it may be done agreeably to the design of the scripture. Our Saviour, for instance, speaks of himself as being a *Way*, a *Door*, and a *Vine* [c]. And St. John, in the Revelation, affirms, that *the seven candlesticks are the seven churches* [d]. There is a visible necessity, that these expressions should be understood as figuratively meant. The question then is, whether in the texts, that have been here mentioned, relating to the Lord's Supper, there be not a necessity fully as great, for quitting the literal sense of the words, and taking them as if Christ had said, "This bread represents my body, as being in a broken or suffering state for your sakes: and whenever, under this figure, it shall be eaten by you, with a due remembrance of my sufferings and death, and with other fit dispositions of heart, it will be the occasion of those effects to your advantage, which my bodily sufferings were intended to produce." If this figurative sense of the texts, *This is my body*, &c. be plainly agreeable to our Saviour's design, and the literal sense would be attended with gross absurdities, the former of these senses must be the true one.

Now, that our Lord intended to use this figurative way of speaking, we shall find to be probable, from the view and reference he appears to have had to the Jewish passover. That was a plain and remarkable type of our spiritual deliverance to be procured by his sufferings and death, in regard to which he is termed *our Passover* [e]. The Jews, in that solemnity, commonly used some figurative phrases. Of the lamb then prepared, they were wont to say, *This is the body of the paschal lamb*. About the bread, their expression was, *This is the bread of affliction, which our fathers ate in Ægypt*. They never could think, that the lamb and the bread, then before them on the table, were the same individual things, which their ancestors had eaten in Ægypt, many hundred years before. They must have understood,

[c] JOHN xiv. 6. x. 7. xv. 1.

[d] REV. i. 20.

[e] 1 COR. v. 7.

that

that those things only represented, and kept up the memory of, the first paschal lamb, and of the unleavened bread eaten with it. Agreeably to these their usual ways of speaking (which were known to be figurative) it was natural, that our Saviour should make use of the like in his new institution. So, instead of one of their common phrases, *This is the body of the paschal lamb*, he said, *This is my body which is given for you*. And in blessing the wine (which they sometimes called *The blood of the grapes*, and which, under that figure, might, naturally, represent the blood of victims, usually shed in solemn covenants and sacrifices of atonement) he said, *This is my blood of the New Testament, which is shed for many for the remission of sins*.

THERE was not the least danger, the apostles should misunderstand him in these ways of speaking: for (besides the circumstances here before mentioned) there were others in their view, which must effectually have prevented any reasonable man from thinking, that these expressions were literally meant. Those circumstances were, that our Lord could not give his whole body with his hand; that he could not give his body, as already broken, before it was broken; nor his blood, as shed, and separated from his body, before it was actually in a state of separation. Such absurdities, that would have attended the literal sense, must have hindered these expressions from being misunderstood, and have shewn a necessity that they should be taken in a figurative sense. And, in fact, the apostles appear to have taken them in this latter sense: for otherwise, no doubt, some difficulties would have been made by them, as well in regard to the possibility of the things, that our Saviour spoke, as to the nature of the command he gave: which latter (even though it had been only to eat human flesh and blood, under the appearances of bread and wine) would have been both contrary to their law, and very shocking in itself. But since there is no mention in the New Testament of any such difficulties made by the apostles, which yet, in a matter of so great moment, would certainly have been mentioned, had any such been made; we from thence may conclude, that the apostles understood our Saviour's words in a figurative sense. And if they understood them so, our Lord must have meant them so; because if he had not, he would, certainly, have explained himself more clearly about a point of such importance, which he saw that his

his apostles misunderstood. These observations might, of themselves, be sufficient to prove, that the words of our Saviour, *This is my body, &c.* may not only well bear, but were, certainly, designed to have, a figurative sense. However; in order to your fuller satisfaction as to this point, the following argument begs your attention.

AMONG other consequences of the Romish doctrine about Transubstantiation, these two are very plain:

FIRST, that the natural and crucified body of Jesus Christ must be contained in every the least particle of the consecrated bread. And,

SECONDLY, that this body may be, at the same time, in two or more places, very distant from each other.

THE former of these consequences needs not to be proved, for the church of Rome expressly avows it in these following words of the council of Trent [g]: *The whole and entire Christ exists under the species of bread, and under every part thereof; as also under the species of wine, and under every part thereof.* In order to make the latter consequence also, abovementioned, very clear, we need only to suppose, that two hosts are consecrated on the same day, the one at Paris, and the other at Rome; and that each of them is kept in the same church, as the practice often is, for several days after. On this supposition, and the Romish scheme, it will be clear beyond all dispute, that the body of Christ must be, in the very same point of time at Paris, and at Rome. Now to admit a doctrine as true, which has these necessary consequences, must, by another consequence, equally unavoidable, confound all distinction between truth and falsehood; it must ruin the proofs of all religion, both natural and revealed; and so must, at last, destroy itself, which you know to be the case of the absurd suppositions, made sometimes in mathematics, to demonstrate the truth.

IN order to see that this must be the consequence, it is necessary to consider on what grounds we distinguish truth from falsehood; or rather in what way our minds are affected, when we actually discern the one of them from the other. Now (without much enlargement on

[g] Totus enim, et integer Christus sub panis specie, et sub quavis ipsius species parte: totus item sub vini specie, et sub ejus partibus existit. *Conc. Trid. Sect. xiii. Cap. 3.*

these points, of which every one can best judge from his own experience and reflection) it will be sufficient, if we observe, that the mind of man is so formed, that, whenever it views it's own ideas, it finds that some of them do, by a necessity in the nature of things, appear to agree together; and others do as much appear to disagree. Between some of them there is a visible correspondence and connexion; between others as plain an inconsistency and repugnance. For instance: The idea of Benefits received, and the idea of gratitude on the part of the receiver, agree together; the idea of property, and that of theft, are repugnant to each other; the idea of religion agrees with the idea of man, not with the idea of beast. Now the mind when it has given a competent attention to any ideas, and has seen them as they are, does, naturally, embrace, and is pleasingly satisfied with, some propositions formed about them, while it does as unavoidably recoil from, and feel a reluctance against, others. Those propositions, which (as rightly expressive of the relations between beings, or ideas) we approve and embrace, we call truths: those, which, for a contrary reason, we dislike and reject, we call falsities; and the natural disposition of the mind, thus to embrace, or reject propositions (of which we discern clearly the meaning and evidence) is the only standard [h] or mean that we have, whereby to judge of truth and of falsehood, as far as either of them can be discovered by the natural power of our understandings.

LET these remarks be applied to the Romish doctrine about Transubstantiation, in consequence of which, both these propositions must be held as true.

FIRST, That the crucified body of Christ is contained intire in every the least particle of consecrated bread:

SECONDLY, That this same body of Christ may be, in the very same point of time, at Paris, and at Rome. What can be more contrary to that perception of our minds, which to us is the natural standard of truth, than both these propositions are? One may easily prove, that they imply contradictions. For instance, the council of Trent

[h] Nobis notitiæ rerum imprimuntur, sine quibus neque intelligi quicquam, neque quæri, aut disputari potest. *Cicer. Academic. Quest. lib. iv.*

affirms, that, in the Lord's Supper, the whole human body of Jesus Christ is under the species of bread, and under every part thereof. If then, from a consecrated wafer X, supposed to be the whole body of Christ, we break off a piece V, and remove it to the distance of twenty Yards; this V is now the whole body of Christ; which being but one, and the remainder of X, being also that same whole body of Christ, the plain consequence is, that V and the remainder of X must be but one and the same thing; even while, by supposition, and in plain fact, they are two things, intirely distinct, and twenty yards separate the one from the other. More instances of this kind might easily be given.

BUT there is no need of any further illustration, in order to shew the utter repugnance of this doctrine to the natural perception we have of things. The mind, at first view, discovers this repugnance as clearly as it can do in any case whatever; as clearly, as it sees the most evident truth, or most evident falsity, that can be proposed to it; more clearly, indeed, than it sees the truth of several propositions of the utmost importance, relating to morality, and even to the being of God himself. For though we can prove this last great truth, with a certainty far beyond any just doubt, by considering the frame of the material world, together with the powers of our own minds; yet still, the connection which the ideas of such a world, and of such powers in our minds, have with the idea of a spiritual being absolutely perfect in all respects, must be owned to be less clear than the connection there is between the parts of this proposition, "That the whole body of Christ cannot be contained within a piece of bread but an inch in compass." Or, of that other proposition, "That this body of Christ cannot be at the same time in two different places at the distance of some hundred miles from each other." The ideas of eternity, of necessary existence, and others that belong to the divine essence, and must enter into our reasonings about it, are, in some respects, obscure, and even beyond the comprehension of our minds; so that though, from considering the several propositions, of which these ideas are constituent parts, an evidence arises, in other respects sufficient to convince us beyond all doubt of the truth of those propositions; yet still this evidence is less clear upon the whole, than that evidence we have for the two

propositions here above-mentioned relating to the doctrine of transubstantiation. In those there is no obscurity or difficulty at all. They consist of ideas, that are all very clear, and fully within the comprehension of the mind, which sees the nature and relations of them by mere intuition, or at the first immediate view. Accordingly, the reluctance which any attentive and unprejudiced mind has against admitting those propositions to be true, is as great as it can be in any case whatsoever.

IF therefore we cannot be absolutely certain, that those propositions are false; then how can we be certain that any others are true, which concern the being and attributes of God, when our evidence for their truth, derived from our perceptions about them, is not so clear as it is for the falsity of those that concern transubstantiation? The same faculty of the mind is employed in both those cases, and is as well fitted to discover falshood as truth. If therefore we cannot depend upon it, for discovering falshood in a case so extremely plain, as the Romish doctrine about transubstantiation, then neither can we depend upon it, for the discovery of truth, in any other case. So that the natural perception of the mind, which, in ordinary cases, is the only means that we have to judge rightly about them, would be rendered quite ineffectual. To us, the distinction between truth and falshood would be utterly confounded and destroyed; and we should be reduced to a total uncertainty about every thing, even about the being and perfections of God. As some chemical liquors will clear a paper of all the characters written upon it; so this doctrine of transubstantiation, universally applied, would utterly efface those original notices which are written upon our hearts. It would make us fit only for such a state, as the Bonzees of China represent one of their saints to have been in, who (they say) spent nine years with his face to a wall, thinking upon nothing, and so became perfect.

BUT can God be the author of a doctrine, which has these consequences, utterly subversive of all morality, of all truth [i], and even of the knowledge that we have of his existence? Most certainly not:

[i] Tunc eam Philosophiam sequere, quæ confundat vera cum falsis, spoliat nos judicio, privat approbatione, omnibus orbat sensibus? *Tull. Quæst. Academ. lib. iv.*

for this would be repugnant to the end of his creating us: it would make a chaos in the moral world, quite inconsistent with his perfections, and with the being of any religion. Since, therefore, these suppositions cannot be admitted, it plainly follows, that, as certain we are of the attributes and even of the being of God, so certain we are that the doctrine of transubstantiation is false. Now, if the church of Rome erred only in this doctrine, it would not be conceivable, that God should require men implicitly, or absolutely to follow her directions in any point of faith: for he, who is the source of all intellectual light and truth, as well as of the most perfect goodness, would never oblige any of his rational creatures to be led into so gross an error, even though it had rested only in the understanding: because, as I have said, it must, by consequence, have darkened and even extinguished the light of knowledge of every sort in all mankind.

BUT this error is attended with another extremely bad consequence in practice. For on the supposition that the body of Christ, accompanied with his divine essence, is in the sacrament of the eucharist; the church of Rome orders the officiating priest (as soon as he has said the words of consecration over the bread) to lift it up to the view of the people present, ALL whom she commands to kneel and adore it. This adoration the writers of chief note in the church of Rome avow to be directed, not only to the divinity of Christ, as being there present, but also to the material object, apparently nothing but mere bread, then exposed to be seen, and afterwards eaten. Their eminent advocate, Cardinal Bellarmine, freely declares, that as “Christ is
 “ [k] properly to be adored; so that adoration belongs also to the
 “ symbols of bread and wine, as far as they are apprehended to be one
 “ with Christ himself, whom they contain.” And in this he plainly follows the doctrine of the council of Trent; which says [l], “there
 “ is no room left to doubt, but that all the faithful servants of Christ

[k] Proprie Christum esse adorandum, et eam adorationem etiam ad symbola panis et vini pertinere, quatenus apprehenduntur ut quid unum cum ipso Christo quem continent. *Bellarmin. de Eucharistia*, lib. iv. cap. 29.

[l] Conc. Trident. sess. xiii. cap. 5. Nullus itaque dubitandi locus relinquitur, quin omnes Christi fideles, pro more in Catholicâ Ecclesiâ semper recepto, patriæ cultum, qui vero Deo debetur, huic sanctissimo sacramento in veneratione exhibeant; neque enim ideo minus est adorandum, quod fuerit a Christo Domino, ut sumatur, institutum.

“ought to pay that Latria, or highest kind of religious worship, which
 “is due to the true God, to this most holy sacrament: for it is not
 “the less to be adored, because it was by Christ our Lord appointed
 “to be eaten.” From which words it is evident, that the same
 disposition or act of the mind, with which they adore Almighty God,
 is directed to the material substance, which is then exposed to view by
 the priest. The same thing, which is to be afterwards eaten, under
 the form of bread, is previously worshiped. And the adoration, here
 paid to the consecrated substance, is said to be grounded on the suppo-
 sition of its having been changed into the body of Christ from bread
 that it was before.

SINCE then we have proved, that there has not been any such change
 of substance, and that, by consequence, the body of Christ is not really
 present in the eucharist, but the bread remains the same that it was in
 its own nature; the worship thus paid to it, must be grievously ab-
 surd, affrontive in proportion to the majesty of God, and highly detri-
 mental to the Christian religion, by offending many persons, and hin-
 dering their conversion or adherence to it. If the gross absurdity of
 this worship did not sufficiently appear of itself, we might quote the
 judgment of one of the most celebrated authors of antiquity in a similar
 case. Tully having observed that corn was called by the name of Ceres,
 and wine by that of Liber, who were then accounted deities, adds, that
 indeed these were figurative expressions commonly used; “but do you
 “conceive it possible, says he, for any one to be so utterly void of
 “understanding, as to think that what he eats is really a God [m]?”
 Averroes, an eminent Arabian physician, though he had great reason
 for triumphing over the Gospel of Christ, on account of the doctrine
 we are now considering [n]: “I have travelled over the world, says
 “he, and have found divers sects; but so sottish a sect or law I never
 “found, as is the sect of the Christians, because with their own teeth
 “they devour the God whom they worship [o].” And we are told by

[m] *Ecquem tam amentem esse putes, ut illud, quo vescatur, Deum credat esse?* *Cicer. de Nat. Deor.*
 lib. iii. cap. 16.

[n] Dionys. Carthuf. in 4 Dist. 10. Art. 1. quoted in Abp. Tillotson's Discourse against Transubstanti-
 ation, p. 34, quarto. (312 fol.)

[o] Rather than with such men, be my soul with the philosophers. *Conf. between Mr. Chillingworth*
and Leawgar. Edit. Lond. 1719. p. 7.

a later author of good credit, that a French priest at Constantinople went to the vizier in full divan, and begun with declaring his intention to embrace the Mahometan religion: at the same time he drew out of his pocket a box full of consecrated hosts, which he himself had deified as a priest, and whereon the worms had preyed, crying out, see here the Gods of the Romish creation, which cannot preserve themselves from corruption [p]. From these instances, as well as from the nature of the things, we cannot but see, in a very strong light, how extremely absurd the doctrine of transubstantiation is, and how highly to be blamed that worship must be of the kind which is due to none but God, when paid on no better grounds than these, to such an object as a piece of mere bread. A belief of this nature, attended with such a practice, must certainly have been owing to a grievous corruption, or disuse at least, of the faculty of reason. Now from so bad a cause as either of these is, to form conceptions glaringly absurd, about the nature of God, and the duty we owe to him, and to carry those conceptions into such a practice, is, certainly, sinful in a high degree. We find how severely God charges the Jews on a like account when they fell into idolatry. *None, saith [q] Isaiah, considereth in his heart, neither is there knowledge nor understanding to say, I have burned part of a tree in the fire, yea I have baked bread upon the coals thereof, and shall I make the residue an abomination? shall I fall down to the stock of a tree?—A deceived heart hath turned him aside, that he cannot deliver his soul, nor say, is there not a lie in my right hand?* The same prophet in another place speaks of the Jews, *as being a people of no understanding [r]*. He means, that they did not exercise, or rather, had very much impaired and corrupted the faculties of their minds: and, therefore, as the text goes on, *he that made them would not have mercy upon them, and he that formed them would shew them no favour*. May not these passages be justly applied, in some measure at least, to the faith and practice of the church of Rome, in adoring the sacramental bread? Must there not be a very great and blameable want of consideration,

[p] De la Motraye's Travels, Lond. Edit. 1723. Vol. I. p. 222.

[q] ISA. xliv. 19, 20.

[r] ISA. xxvii. 11.

in this latter case, as well as in the former? Supposing the proofs we have given to be good, this charge never can be, with reason, denied.

BUT some advocates for that church (appearing to be doubtful of the goodness of their cause in this capital point) have endeavoured to provide an excuse for themselves, by alleging, that their intention is to worship Christ from a belief of his bodily presence there: which, if it were true, would require such a worship. And therefore, though he should not be, in fact, so present, yet they will be acquitted before God, on account of the goodness of their intention. But the Romanists must know, that there are many cases, wherein men (who do things that are in themselves evil) will not be justified by their having been mistaken, and thought them to be good. Error (though it may, indeed, be sometimes excusable, even when persisted in) certainly is not so in every case. In order to make it have any title to be excused, it must be such as, humanly speaking, could not be avoided; and, therefore, is not to be justly charged on the erring person, as those things are not, that are out of their power. In any such case, indeed, men acting to the best of their knowledge, when they were not able to inform themselves better, will be excused before God, both for their actions and their conceptions. But the case will not be the same, when their error proceeds from a non-use, or a corruption, of their understandings, occasioned by their passions, or prejudices owing to them, which they might easily have overcome, but neglected to do it, in regard to worldly views and interests, or from a want of such consideration as might and ought to have been employed. In every such case, their absurd conceptions, as well as the actions consequent upon them, will be justly blameable, and charged by God to their account. How far this will be the doom of particular persons in the church of Rome, it is not our province to determine: *To their own master they must stand or fall*, Rom. xiv. 4. But, in general, this is certain, that since the doctrine of transubstantiation is absurd and false, the practice of adoring the sacramental bread, as the Papists do, must be highly irrational, and dishonourable to God, and very dangerous to the salvation of any Christian by whom it is practised.

AND now, upon the whole, I beg leave to return to the argument proposed at the beginning of this tract, against the claim made by the

church of Rome, of an absolute authority over all Christians in every point of religious faith. The first proposition in that argument was, that no church (which enjoins a thing to be believed that is really false; and, in consequence of it, a thing to be done which is morally evil) can have authority from God to require of any person an absolute submission to her decisions concerning all points of religious faith. The truth of which proposition hath been evinced by shewing, that the supposition of God's conferring this authority upon any church, which acts as this proposition describes, must be manifestly contrary to his perfections; and, therefore, is absurd and not to be allowed.

THE second proposition in that argument was, that the church of Rome, and all other churches in communion with her, do, actually, injoin a thing to be believed which is grossly false; and, in consequence of it, a thing to be done that is morally evil: the truth of which proposition has also been shewn by proving, that the doctrine of transubstantiation (which is held by the church of Rome) is utterly false, and the practice of adoring the host in the eucharist, which she enjoins in consequence of it, proportionably evil. The conclusion, therefore, arising from both these propositions, is plain and certain, viz. that neither the church of Rome, nor any other church in communion with her, can have authority from God to require of any persons an absolute submission to her judgment in all, or any, points of religious faith. So that every one, notwithstanding any claims on her part, is fully intitled to a freedom of using his own judgment about them; and her taking away this liberty from those of her communion, is justly to be reckoned a most grievous usurpation, by which they are reduced to a state, like that, of which St. Austin says [r], “The
“ miserable servitude of the mind is to take mere signs for the things
“ themselves, and not to be able to raise its view above the bodily
“ creature to discern the eternal light of truth.”

It is not certain that any church, besides that of Rome, hath ever laid claim to infallibility, and absolute authority in all points of faith.

[r] Ea demum est miserabilis animæ servitus, signa pro rebus accipere, et supra creaturam corpoream: oculus mentis ad hauriendum æternum lumen levare non posse. *Augustin. de doct. Christ.* lib. iii. cap. 5.

THE Greek church and others have been said [s] to do it; but the facts have not been sufficiently proved. However, as some other church may, possibly, hereafter become so corrupt as to make the same claim, I shall here use an argument that will, I hope, appear to be decisive against any such pretension, by what church soever it may be made. The evidence for the Gospel of Jesus Christ depends, chiefly, on the testimony of a number of persons, who are said to have been his constant attendants, to have observed his conduct, to have heard his doctrine and precepts, to have been present at the many and great miracles he performed in order to shew that he came from God; and, particularly, to have seen and handled and conversed with him several times after he had risen from the dead. Their testimony as to these points is very particular and altogether consistent with itself. But now the testimony of men, though it is often true, and when it is so, is a just ground of belief; yet may also be false, and whenever it is so about matters of religion, must be of very ill consequence to those who are imposed upon by it: all men, therefore, must be both greatly concerned, and have a right to judge of the credibility of any such testimony. The credibility of all human testimony, as to matters of divine revelation, depends not only on the seeming abilities and integrity of those by whom it is given, but also on the nature of the things they testify. For if they affirm things to have been done by a person, pretending to divine revelation, which reason assures us were not possible to have been done; if they represent him to have declared that things were true, which, as being absurd, or contrary to known facts, must certainly have been false; or to have enjoined, as by commission from God, any practices visibly immoral or impious;---any thing of this sort, plainly contained in that system of doctrines and facts, which we are to receive upon their testimony, must invalidate and destroy the credit of it, however good the character of the witnesses, and their opportunities of being well informed, might otherwise appear to be. We must, in such a case, be obliged to conclude, that these persons

[s] J' ajoutay que les Grecs et les Ethiopiens estoient disposez à croire, sans examiner tout ce que la vraie Eglise leur proposoit. *Conf. de Bossuet avec Claude*, p. 167. idid. p. 317. Mais, dit on, l'Eglise Romaine n'est pas la seule à s'attribuer cette autorité; l'Eglise Grecque et d'autres Eglises veulent aussi qu' on les croye sur leur parole. See p. 222.

were either deceived themselves, or intended to deceive us. For the characters of men, how fair soever they appear, may yet be deceitful. But the natural and fixed relations of things, and truth, which is exactly agreeable to them, cannot, in the present system, be otherwise than they are; nor in plain cases can they be otherwise than we see them to be. Our consideration, therefore, of the nature of the things testified, is highly proper, and even necessary, to assure us thoroughly of the credibility of any testimony given by men.

Now, from hence it follows, that every man must have a right to judge of all things to which that testimony relates. For if any part of those things was to be exempted from our judgment, that part might be such, as would justly take off the credibility of the testimony, which would, in consequence, affect the whole. We must, therefore, have a right to judge of the whole, so far as to be satisfied that it does not contain any thing contrary to piety, morality, or truth: God, in making us rational creatures, whose happiness will depend in great measure on the judgments we form, must have intended that we should do it. Now this fully proves that he cannot have invested any persons with an absolute authority to judge for all others about any matter of religion: for a right in any man to judge, finally, for himself, about every thing contained in the Christian religion, is inconsistent with a right or authority in any other person to judge absolutely for him, and to oblige his assent to any thing repugnant to his own judgment. Every man, therefore, must have a right to judge, finally, for himself, in all matters of religion.

ACCORDINGLY there are many express and strong passages in the New Testament, which shew, that it was our Saviour's intention to allow, and encourage all men to exercise their private judgment in every matter of religion; not to lay them under an obligation of submitting, absolutely, to the decision of any man, or body of men, concerning those matters. Our Lord asked the Jews, *Why they did not, even of themselves, judge what was right* [t]. He directed them [u] *to call no man master upon earth, but themselves to search the scriptures* [w] *in order to be satisfied that they testified of him.* In like

[t] LUKE xii. 57.

[u] MATTH. xxiii. 8.

[w] JOHN v. 39.

manner he bade them consider his [x] *miracles*. If *I do not the works of my father*, says he, *believe me not*; which implied that they were at liberty, and even were obliged, to judge both of the nature and the design of those miracles, whether they were done in a good cause, and by power derived from God, or not.

INDEED, it ought to be observed, that miracles, or visible and remarkable changes in the ordinary course of nature beyond any human power to produce, though fit to excite the attention of mankind in the case of any truly divine revelation, yet were not, in all cases, designed by God to be, merely of themselves, decisive proofs that the persons who wrote them were commissioned by him. He seems to have permitted some things of this kind to be done by evil spirits, both under the Mosaic and the Christian dispensations, that men might from thence be laid under a necessity of considering more attentively the nature of the doctrines and facts therein contained; and of comparing them with the great standard principles of reason and morality; as well in order to improve their minds, as to try the good disposition of their hearts. This was expressly declared by Moses [y]: *If a prophet, says he, give a sign or a wonder, and the sign or the wonder come to pass whereof he spake unto thee, saying, Let us go after other Gods—and serve them; thou shalt not hearken unto the words of that prophet:—for the Lord your God proveth you to know whether you love the Lord your God with all your heart, and with all your soul.* And our Saviour had probably the like design in permitting, as he declares [z], *that there should arise false Christs and false prophets, and shall shew great signs and wonders, insomuch that, if it were possible, they should deceive the very elect.* Behold, says he, *I have told you before* [a]. And the primitive Christians were in like manner forewarned by St. Paul, that *the man of sin should be revealed with the working of all signs, and with all deceivableness of unrighteousness* [b], on which account they ought to be carefully on their guard against all false pretenders: and as they could not know who would be such without due examination, he therefore exhorted them to *prove all things* [c]. He fairly submitted

[x] JOHN X. 37.

[y] DEUT. xiii. 1, 2, 3.

[z] MATTH. xxiv. 24.

[a] Verse 25.

[b] 2 THESS. ii. 3. 9. 10.

[c] 1 THESS. v. 21.

what he himself said to their judgment, and commends the *Beræans* for searching the scriptures [d] to see whether things were really as he represented them, or not. St. John, to the same purpose, says, *Believe not every spirit, but try the spirits whether they be of God.* And again, *Because many deceivers are come into the world, look to yourselves that you may not lose that which you have wrought* [e]. These considerations and texts, one would hope, are abundantly sufficient to prove against the Romanists that our Saviour has not provided any constant infallible authority in any part of his church, to which he has obliged all, or any of his followers, absolutely to submit; but that, on the contrary, he plainly intends and requires, that all of them should duly exercise, and be finally determined by their own judgments, respectively, as to all matters of faith and practice in religion.

BUT are all men able to judge of such points with any good effect? Can wholly unlearned and labouring people in villages or in towns examine and determine rightly for themselves, about the genuineness and divine inspiration of the scriptures; about the exactness of the different translations; or about the true sense of many passages in them? Must they not, by their presumptuous attempts to do things so plainly and so much beyond their abilities, be led into errors pernicious to them? Will they not often pervert the holy scriptures to their own destruction?

THIS objection was urged against the Protestant cause by archbishop de Fenelon, in his Letters to the duke of Orleans, who was, afterwards, regent of France, during the minority of this Lewis XV. That prelate represents the low and illiterate part of mankind to be as unable to make a true judgment of these and some other points, as a man, confined by a palsy to his bed, is unable to get out of it, by himself, in case of any danger. Accordingly, he affirms, that it would have been inconsistent with the goodness of God, if he had not provided an infallible authority in his church for the instruction of such unlearned persons in the truths that are necessary to eternal salvation. And it is remarkable, that the learned Mr. Bayle, though he certainly was not a friend to Popery in general, yet, as to this point, went so far as to

[d] ACTS xvii. 11.

[e] 1 EP. iv. 1.

allow that the strength of the church of Rome undoubtedly consists in the objections she makes about the case of such ignorant persons, whom Protestants suppose to be able of themselves to distinguish what is true, from what is false, in an immense heap of controversies. The archbishop's assertion shall soon be considered with all the respect due to the character of that good prelate. But, first, with regard to Mr. Bayle, I would observe, that he (who was always disposed to make the most of an objection, especially concerning any part of religion) represents this the stronger, by not stating the Protestant opinion with exactness; for we do not pretend, that unlearned persons are able, merely of themselves, to judge rightly, or to gain a competent satisfaction, about questions of this sort. For want of skill in the ancient languages, it is, visibly, impossible that they should read the holy scriptures in the originals, or know, at the first hand, what the primitive Christians or others wrote about them. All that we maintain is, that in a country, like this of Great Britain (where the Christian religion is professed publicly and preached, and a proper degree of freedom, in speaking and writing about it, is allowed) men of common sense, and due application, though they be unlearned and in low ranks of life, yet are capable of having such evidence about all necessary points relating to the divine inspiration, the faithful version, and the true sense of the holy scriptures, as may be to them sufficient grounds of a rational faith. For an unlearned man may easily consult with several of the learned, as well laymen as clergymen, of known good characters, and by them may be informed.

In the first place, of the principal facts, which are evidences to us, that the books of the New Testament, at present in our hands, were written by the apostles and others, whose names they bear, and are now, in all points of moment, the same as they were at first. It may not be easy to acquaint an unlearned man with all the particular things about times, places, writings, and their authors that are known to the learned, and are of some weight with them in regard to the holy scriptures; but the principal and really decisive facts may be, with sufficient exactness and force, represented to him. He may be told that the Christian religion, which somewhat above 1700 years ago had its beginning in Judea, or Palestine, was from thence, in less than 200 years,

years, propagated into most parts of the world then known, in all which countries religious societies or churches of Christians were immediately formed for the worship of God through Jesus Christ, as the redeemer of mankind. The persons of whom those churches consisted were in those times remarkably zealous for their religion, which they professed at the imminent hazard of their fortunes and their lives. They must, therefore, no doubt, have been solicitous to know whether any books, that were published under the names of some of the apostles, or others revised and approved by them, and which professed to contain a history of the life, the actions, and doctrine, of the death and resurrection of Jesus Christ, were, really, written by those persons or not. And for this inquiry they had sufficient opportunities, because those books were published while the authors were living; at which time, as well as in all ages afterwards, Christians met together on every Lord's Day for the worship of God, in those assemblies the scriptures of the New as well of the Old Testament were read, and exhortations were made upon them; and the churches in different cities and counties held frequent correspondence by letters and messengers with each other. Upon such inquiry most of the books of the New Testament (especially the Four Gospels and the Acts of the Apostles) were received as genuine by all the churches. Those books, which were by some of the churches doubted of at first, were afterwards, upon farther inquiry, also received: and other books, which pretended to be the works of some of the apostles, were rejected as spurious; which circumstance shewed the care of the churches in their inquiry. The books, which were received as genuine, were kept in all the churches with the greatest care and veneration. Many Christians had copies of them in the original language, or in very early translations; and divers of them would rather have suffered death than delivered them up, as appeared in the persecution by the emperor Dioclesian. After these scriptures were thus widely dispersed into so many and so distant churches, it was morally impossible to suppress or corrupt, or to make any great alterations in them: and many of those Christian churches, having remained in succession to this time, in the same countries, very distant from each other, where they were at first planted; and having always retained a like veneration for those scriptures, as the rule of
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their faith and worship, they have actually preserved them without any material alteration : so that upon comparing many copies brought together from different and distant countries (though many variations of small moment have happened in transcribing so numerous copies) yet they have all been found to agree in all points of importance. That all these facts are truly related, an unlearned man may with reason be assured, not only from the testimony of the particular persons whom he consulted, but also from the agreeing accounts of them that have been published in his country by many others of the learned, without being at all, or, at least with any good reason, contested. Of this public agreement about them he may be very easily and fully assured, and upon it he may have a just reliance, as confirming the truth of the facts which have, by the persons whom he consulted, been related to him.

AND from a concurrence of both these same evidences he may also be assured that the books of the New Testament, thus proved to be genuine, have been faithfully translated into the language of his own country. He will reasonably suppose, that, if this translation was in any point of moment remarkably faulty, some of the many persons who understand both the languages, would discover and expose the faults committed in it, which not being done, as he may easily and fully be assured it is not, he may from thence with reason conclude there is no cause for doing it.

AND from these following considerations he may also be satisfied, that the things contained in these scriptures must have been true. For, in the first place, the writers of those books had full and sufficient opportunities of knowing all the facts that they relate. Most of them were attendants upon Jesus Christ during the whole course of his public life ; they were acquainted with his conduct ; they had heard all his discourses, doctrines, and precepts ; they saw all his actions, especially his miracles, which, in general, were so public and of such a kind, that they could not themselves have been deceived about them ; above all, not in that great event of his having risen again from the dead, which was the chief evidence of the truth of his pretensions. Nor is it conceivable that they should design to impose upon the world in their accounts of those matters ; because, first, they published those accounts during their own lives, and in the country where
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the things were said to have been done; and where many persons must, certainly, have known whether things so public in their nature were done or not. The writers, therefore, of those accounts, had they falsified in them, would certainly have been contradicted and opposed; they must have expected to be so. Now the apprehension of being thus treated, and of incurring the shame of being convicted of relating falsities, would have kept them from doing it, unless they had a view of gaining some considerable interest by running this hazard. But such a view of interest they could not have; for if this religion was false, they must know it could never succeed in the world. They must have been sensible, that they had against them the passions and prejudices, the learning and eloquence, the wealth, policy, and power, not only of the Jews, but of the Heathen world. Over all these advantages, a small number of poor, unknown, illiterate men as they were, without any power, or credit, or connexion, or policy, could never have had any hopes of prevailing, had they been conscious that they themselves were impostors. They must, on the contrary, have been fully sensible that their attempting to publish and maintain these facts as true, and to propagate this religion, would immediately draw upon them not only general contempt and disgrace, but violent ill usage and persecutions, that would end only with their lives. And, after this life, they must, if they believed even natural religion, have feared that the vengeance of God would fall upon them as impostors: so that they had no possible views of interest to put them upon relating falsities about their religion: on the contrary, they had the strongest reasons to keep them from doing it. Yet they actually did publish these accounts as true; and used their utmost endeavours to propagate this religion against all opposition; and notwithstanding all their sufferings, which they chearfully sustained, they laid down even their lives in confirmation of its truth.

IN doing which, they could not have been enthusiasts, who had wrought themselves up to a belief, that those things, which they said of this religion, had been true, when they really had not been so. For though it may be possible for men, whose heads are not quite sound, to imagine that they hear and see things, which, in reality, they do not; yet that this could not have been the case of the apostles we may be

be fully assured from the success they had in their undertaking. For if they had been such enthusiastic and visionary men, other persons, to whom they applied themselves, would soon have discovered that they were of this character; and, on that account, would never have been influenced by them. Nor, indeed, in a case where their profession of this religion must expose them to great sufferings, would the generality of mankind have been persuaded to believe by the bare testimony of one or two of the apostles, how rational soever they had appeared to be, unless they had supported and strengthened their testimony by works plainly miraculous, which justly gained both attention and credit to all they said. Their wonderful success, therefore, proves both that they must have been rational men, and must also have wrought unquestionable miracles. From these two considerations, therefore, of their probity (approved by their sufferings, and of their wonderful success, which latter could not have been such as it was without known and great miracles) we may be assured that their testimony was true. The personal character of Jesus Christ, his doctrines, miracles, and predictions, his death, resurrection, and ascension into heaven, were, in all points, such as they are in the holy scriptures related to have been. By consequence, he must have been, as he said, the Son of God; and his apostles, commissioned by him to put all necessary things in his religion into writing, for the instruction of mankind in all ages, must have been, as he promised they should be, divinely inspired. And of this truth, and the others deducible justly from all the particulars here above-mentioned, (which, if duly represented, may easily be apprehended) an unlearned man may have a very just and rational belief.

THE Romanists will not, indeed, allow that this evidence from the mere testimony of men, be it ever so probable, is a ground sufficient whereon to raise a true Christian faith. And as our evidence for the genuineness of the scripture does, in our Protestant scheme, depend chiefly on the testimony of the primitive Christians, who lived after the apostles, and though they were justly credible, yet certainly were not divinely inspired, or, strictly speaking, infallible, therefore the Romanists say, that this testimony is not a ground sufficient for the faith required in a Christian, which ought to be built upon infallible grounds. And

as no such ground can be had, unless the Catholic church be infallible, it is, therefore necessary to suppose, that God has, for this purpose, made his church infallible. This doctrine is plainly avowed by the celebrated bishop Bossuet, in his conference with Mr. Claude, p. 328. He is speaking of Christians, who have never read the holy scriptures, and asks upon what grounds believe them to be divinely inspired. If they only depend upon the testimony of men who are not infallible, this faith, he says, is merely human; and though indeed, p. 346, it is like that by which we believe there is such a city as Constantinople, and there was formerly such a person as Alexander the Great, yet this faith is not sufficient for a Christian, who, p. 345, unless he will renounce his religion, ought to act upon the motive of faith truly divine. And no such faith is possible to be had, but upon the authority of the infallible church, which therefore God hath provided for that purpose.

BUT by this notion concerning divine faith, the Romanists are carried into an absurdity not to be avoided. For how does any one know, that the church is infallible? Experience shews us, that this knowledge is not owing to a divine revelation, made to every single person. The Romanists do not pretend to this. They agree, that it can only be derived from the holy scriptures. But withal they insist, that these very scriptures, in order to be in a condition to afford this knowledge or faith, must themselves have been first proved, by the authority of the infallible church, to have been divinely inspired. So that in their scheme, the truth of one fact is necessary to be proved by another, which latter, at the same time, needs equally to be proved by the former; from whence it is visible, that neither of them, in reality, can have any proof at all. For this is the same case, as if two bodies, of which each in itself is quite void of any light, should be supposed to have light reflected upon the one from the other, or as if two noughts should be supposed to make a sum. Both which suppositions are visibly absurd. Thus the Romish notion, that the only true Christian faith must needs be grounded on the infallibility of the church, destroys itself by producing an absurdity. Besides which, since I have shewn, from other considerations, that the church is not infallible, it must, therefore, be sufficient that our belief of the divine inspiration of holy scriptures, as well as of all other points relating to the truth of the gospel,

is grounded upon the like credible human testimony, on which we believe other facts at a like distance of time and place. Upon this evidence, from credible human testimony, all men act in the management of their secular affairs of the greatest importance. They venture their wealth, and even their lives, by sea and land. It is, therefore, reasonable, and God actually requires, that they should act on the like highly probable, though merely human, evidence with regard to the concerns of religion, and, in particular, as to their belief of the genuineness and the divine inspiration of the holy scriptures.

AND when a man is thus reasonably satisfied about these points, he may, with less difficulty, judge of their contents, as far as will be necessary to his salvation. The main substance of them was at first preached to the poor, the unlearned or ignorant, and was enough understood by them: our Saviour says, in his figurative language, that the truths of his gospel were *revealed unto babes* [g], that is, to persons of the lowest rank and capacity; and may, therefore, no doubt, be comprehended by such at present, who can either read the scriptures, or have opportunity of knowing them. For he promises, that *whoever doth his will shall know of his doctrine whether it be of God* [h]. The necessary terms, on which happiness in the life to come is proposed to mankind, are so plainly expressed, and so frequently repeated in the scriptures, that they cannot easily be mistaken. Common sense, with an honest heart, the ordinary grace of the holy spirit, and the instruction of learned men, in cases which require it, will, in general, be sufficient to make any persons, who hear or read the scriptures often, and with due attention, comprehend as much of them as will be necessary to their salvation. However, I would not be understood to affirm, that all Christians have been, or now are, able to judge rightly of several questions relating to the scriptures, which, considered of themselves, are of importance in religion. Every one, who knows the state of Europe, must be sensible, that in divers parts of it numbers of persons may at any time be found, who, though in their infancy they have been baptised into the Christian religion, yet afterwards have heard very

[g] MATTH. xi. 25.

[h] JOHN vii. 17.

little about it, have had nobody to inform them of the arguments for the divine inspiration of the scriptures; are neither able of themselves to read those books, nor have any opportunities of hearing them read, or of gaining such knowledge of the contents of them, as would be requisite, if such persons were ever so well disposed, to their forming a competent judgment about them.

BUT what inference are we to draw from these observations? Are we to conclude with archbishop de Fenelon, and the church of Rome, that God in his goodness must have provided an infallible authority for the assistance of such persons? No: this conclusion would be visibly false. For if his perfections made it morally necessary for him to do this, they would also make it necessary for him to provide that all such ignorant Christians should, in some way or other, have benefit from it. But this we find is not actually done. There are at all times many Christians, who never had an opportunity of receiving instructions from any priest, or other member of the church of Rome (nor know any thing of its infallibility or absolute authority). From whence the plain consequence is, that the Romish way of arguing is inconclusive. For if God, consistently with his perfections, may suffer some Christians to live in ignorance or error, without having any advantage of the supposed infallibility, then he cannot be obliged to provide it for any; since what he may, consistently with his perfections, omit to do in the case of any Christians, he may likewise omit in the similar case of any other Christians, and even of all. Which consideration shews, that the Romanists are guilty of no small presumption for arguing, as in this case they do, from mere natural reason, that God must have provided such an infallibility.

THE right inference to be made from these dispensations of divine Providence, is, that God (who has placed men in circumstances that have occasioned their ignorance or error about any points of the Christian religion to be, morally speaking, unavoidable) will not require more from them than they have been able to perform, but will reckon it sufficient that they make the best use they can of the abilities and opportunities that he has afforded them. Such a conduct on their part would satisfy any equitable master on earth, and much more assuredly will it be accepted by our heavenly Father, who is perfectly

good, and whose *mercies are over all his works* [i]. He, certainly, will not punish any men for the want of such measures of faith, as they were not able to attain. There are on the contrary grounds to hope, that he will, in some degree, reward those persons who have done what they could towards knowing, or believing and serving him a-right, though for want of some advantages and opportunities they have remained in ignorance as to some things, and have fallen into error as to others.

For it is of moment to be observed, that the value of faith, or knowledge in religion, is to be estimated from the disposition and conduct of the mind in seeking after them, and from the moral or practical improvement that is made upon having attained them. An implicit faith, which men, without any reasoning of their own, have received from the mere authoritative dictates of the persons by whom they have been educated or instructed, may, indeed, supposing it is a right faith, be advantageous to the believers. It may in some measure restrain them from vice, and excite them to virtue. And these good effects of it will be of value in the sight of God. But such a faith, which has not been grounded upon reasoning or inquiry (besides that it will oftner be wrong than right) will, even when it is right, be always in danger of being unsettled and overthrown by the objections of others, or by the influence of irregular passions in the men themselves. Such a faith is, by our Saviour, compared to a *house built upon the sand* [k]. On these accounts, God who has committed to all men, in some degree, the greatly improveable talent of reason, by no means intends that they should, with a false humility, either keep it, as it were, *wrapped up in a napkin* [l], without using it at all, or should offer it up, as some Romanists pretend to do, by way of sacrifice to him. To govern our passions by our reason, is, certainly, our duty, and may be considered as a fit sacrifice to God. But to sacrifice our reason so far as to believe things that appear plainly impossible, can never be our duty; because, as I have shewn, it must tend to subvert the foundations of all moral knowledge and practice. God requires no more of us but that we should duly employ our reason about matters of religion,

[i] PSAL. cv. 9.

[k] MATTH. vii. 26.

[l] LUKE xix. 20.

which are our principal concern, and about the evidence that he has given for the truth of them; that they should exert it with a diligence proportioned to the great importance of those things, and that, in order to their seeing these evidences in their proper force, the mind of each of the inquirers should not be influenced by any undue passion, nor by any prejudice, which has arisen from such passion, but should be really desirous to know all the truths in which they are concerned, should use diligent endeavours to this purpose, and be disposed to practise in all points according to what they find to be their duty, with respect to God, to themselves, and to all mankind. It is possible for men to have these good dispositions to a considerable degree in their hearts, even when they are not in circumstances to discover the truth of religion in several points. And if men be really in these dispositions, God, who sees the heart, will graciously accept them as being there, even when, for want of other advantages, they do not produce any suitable effects. And, possibly, in some cases his abundant goodness may provide for such persons, those evidences or instructions they wanted towards farther measures of belief. He did this in the case of the *Æthiopian* nobleman mentioned in *ACTS viii. 28.* This person gave signs of his possessing the dispositions above-mentioned. Having had some notions about a *Messiah*, who was to arise among the Jews, and having, probably, been directed for instructions about him to their antient prophecies, he was reading one of them even in his journey. And when *Philip* the deacon, appointed by the providence of God to meet him, asked whether he understood what he read, he frankly acknowledged that he did not well comprehend it, but shewed his desire to be better informed. He took up *Philip* for this purpose into his chariot, and as soon as he had a reasonable satisfaction about the design and evidences of the gospel, he readily believed and desired to take upon him the obligations of it. On account of these good dispositions in his heart, God was pleased to provide in an extraordinary manner for his instruction, and increasing his faith.

He did the like in the case of the *Roman centurion*, *Cornelius*, mentioned *ACTS x.* This officer was virtuously and religiously disposed. He prayed often to God, and gave much alms to persons in want. On which accounts signal and extraordinary mercy was shewn him

him by God; who, though indeed he had also a view to notify to the converted Jews his design to receive the Gentiles also into the covenant of grace, yet might easily have done that by other means. He chose Cornelius in particular for that purpose, because he knew him to be a fit object of his mercy and grace, as he also had found the Æthiopian nobleman before.

HOWEVER, these instances, I own, will not prove that God is, in justice, or even in goodness, obliged to make a provision like this for all well-disposed persons, who have not sufficient evidence for their giving a rational assent to the truths of the gospel in general, or any particulars relating to it. He is, without question, intirely at liberty to make what difference he pleases both in the original capacities of his creatures, and in the opportunities he affords for the improvement of them. There are, probably, some beings whose intellectual and active powers are, in their extensive operations, above what we at present can imagine. And we know there are others here on earth, who, though indeed rational in some degree, are put into such a condition of life, that they labour for the most part of it in caverns underground, with small opportunities when they come out, for the improvement of their reason, either by an exercise of it themselves, or by instructions from others. How very different allotments are these! Yet can any of those, who have the lowest of them, say with reason to his Maker, Why hast thou made me thus? Hath not a potter both power and right enough over his clay to make one vessel to honour, and another to dishonour? And are not the power and right of God over his creatures, with regard to the degrees of perfection he will give them, fully as absolute? He, certainly, is at liberty to put any of his creatures into such a condition of existence as will, if they act rightly, be upon the whole much better than not existing at all. And he is equally at liberty, whether he will give them any reward for their good dispositions, or for the improvements they make in consequence of them. For no man, in any case, does more than he ought to do. On the contrary, every one falls very much short of performing his duty; and therefore no one can have a claim of right to any reward.

HOWEVER,

HOWEVER, since we, from the gospel of Christ, have just reason to believe that our Almighty Creator, with goodness, on his part, immense and infinite, though by us quite unmerited, will condescend to accept, and even reward our faith, though it is but imperfect, provided it is as much as we could well attain, and is joined with good practice sincerely endeavoured, though, in many things, deficient: there may be, from thence, some ground to hope, that he will also give a proportioned reward to lower degrees of a like faith and practice, when no higher could be attained, and when all the talents afforded have been duly improved for the attainment of these lower ones: and that even error, as to religion, when it has been, morally speaking, unavoidable, will not be punished; but rather that, when it hath been joined with dispositions otherwise good, these latter will not, on account of that error, wholly miss of a reward. The perfect unlimited goodness of God affords a foundation not at all improbable for such a hope.

THIS doctrine, indeed, upon which our excellent countryman Chillingworth and many other judicious Protestants insist, bishop Bossuet and the church of Rome very vehemently decry. They say that it puts all sects of Christians, if not all other men, upon an equal foot as to eternal salvation; and so, disposing men to be indifferent what religion they are of, it hurts very much, and even tends to extirpate orthodox Christianity [m]. But these charges are made without rea-

[m] Quelque evidence qu'on veuille poser dans l'Ecriture, elle n'est pas telle qu'il n'y ait diverses manieres de l'entendre, dont quelques unes sont des erreurs contre la foi; c'est pourquoi il y a deux regles suffisantes pour sauver les hommes. La premiere, de recevoir le texte de l'Ecriture avec toutes ses consequences necessaires incontestables et indubitables: la seconde, dans tout le reste où l'on pourroit errer contre la foi, de tacher de croire l'Ecriture selon son vrai sens, sans se condamner les uns les autres; parce que pour condamner, il faut être juge, et, en matiere de religion, juge infallible. Or il n'y a point de juge de cette sorte, l'Eglise n'est pas infallible. Chaque particulier l'est encore moins dans ses sentiments; donc qu'on ne se juge point les uns les autres, et que chacun demeure innocemment et impunement dans son sens, ce que est en termes formels l'assurance du salut de chaque Chrestien dans sa religion deduite manifestement de ce qu'il y a point un juge infallible. Il n'y a donc point de milieu entre croire l'Eglise infallible, et sauver tout le monde dans sa religion; et n'être pas Catholique, c'est necessairement être indifferant. *Bossuet, 6me. Avertiss. p. 283.*

Où l'on voit une tolerance parfaite et le salut accorde sur le fondement commun des indifferens, qui est de sauver tous ceux qui se servent de leur raison pour chercher la verité dans l'Ecriture. *Bossuet, ibid. p. 285.*

Il n'y a qu'une seul remede à une dangereuse maladie, qui tend manifestement à l'extinction du Christianité et de toute religion. *Ibid.*

son against us: for the church of England in her xviiiith article, expressly censures those who affirm, “that a man shall be saved in the law or sect that he professeth, if he be diligent to frame his life according to that law, and the light of nature.” She says, that “the holy scripture sets forth the name of Jesus Christ, as that only by which men may be saved.” So that she plainly holds, that every man is obliged to embrace and continue in this religion, if he have opportunities for doing it. And, by consequence, that (if he fails of so doing, either by neglect of proper inquiry and attention, or from ill passions, or from prejudices, which, by his fault, have arisen from them) he will, on any of these accounts, without repentance, be excluded from eternal salvation. And her judgment is the same about Christians, who are justly blameable for the errors they hold as to any particular points of this religion. In her articles she censures divers of these: and she thinks, that the strong persuasion of such faultily erroneous persons that they are in the right, will not excuse them in the sight of God, or give them any just ground to hope for eternal salvation. Those Protestants, therefore, who adhere to the doctrine of the church of England, cannot justly be reproached with thinking that all religions are equally true or good in themselves, or equally conducive towards making men eternally saved. On the contrary, we clearly profess and maintain, that there is only one religion (to wit, the Christian, as it is delivered in the holy scriptures) that is in itself true or effectual for that purpose: and that this religion ought to be, with diligence and integrity, inquired after, embraced, and adhered to by all men. Consequently, if any one, who has opportunity of inquiring after, and seeing the evidence for it, through sloth or negligence, prejudice or passion, or any other undue cause, fails to see and embrace the truth, he will, upon that failure, in his bounden duty, be justly excluded from eternal salvation.

ALL that we maintain, or rather humbly hope, with regard to men who err as to any points of religion, is, that if they have really made the best use they could of the abilities and opportunities they have had, and yet, as we think in some cases they may, have missed of the truth in particular points, they will not, on that account, fall under the displeasure of God; but, on account of the good dispositions of their hearts,

hearts, will be excused, accepted, and, in some degree, rewarded by him. Not that we ascribe the mercy that will be shewn to them to the erroneous religion which they profess; but, solely to the infinite goodness of God, through the absolute merits of Jesus Christ, who is set forth as an atonement and propitiation for the sins of all men, even of those who have not known him. Now where can there be any ill consequence of this doctrine? Does it tend, as the Romanists say, to make men indifferent or unconcerned whether they find the true religion or not? On the contrary, when this doctrine plainly declares, that there is only one true religion; that men are obliged with their utmost diligence and integrity of heart to seek after, and, if possible for them, to find it: that, if it be found, it will greatly conduce to the increase of their happiness, as it will raise them to greater degrees of moral improvement; and that, if they fail, by their own truly blameable misconduct, to find, embrace, and adhere to it, they will, of a certainty, be miserable for ever. What motives can be stronger than all these are, to put them upon such a search? If men have any consideration at all, or regard to their own eternal interest, they will from hence be led to inquire diligently and honestly, as they ought to do, into the evidences and truths of religion: and if they so inquire, they will be likely to attain to the knowledge of the truth. It is plain, therefore, that our doctrine is so far from tending to extirpate or hurt the truth of religion, that, on the contrary, it tends to make it more generally received, and more constantly adhered to, and practised. At the same time it certainly is most agreeable to the mercy and goodness of God, not to suppose that he expects to *reap where he hath not sown* [n], but that he will graciously accept and reward men, according to their use of what they had, not of what they had not. Now if this most reasonable supposition be made, there is no need, as the archbishop of Cambray imagines, to suppose that God has provided an absolute infallible authority for the direction of men to the truth in religion, because they may be saved eternally without it.

AND, if there be no need of such an authority, for the sake of unlearned or ignorant men, there is, certainly, none for the sake of men

[n] MATTH. XXV. 24.

of learning, who have both natural abilities, and opportunities sufficient, if they be duly improved, for the discovery of the truth. Archbishop de Fenelon, indeed, formed an argument even from the case of these persons, to prove the necessity of an absolute and infallible authority in the church. He observes, that the learned men themselves need much to be humbled and made sensible of their own incapacity. By their very reasoning they come to be more in doubt and unsettlement of mind than the ignorant are. They are obstinate in maintaining the most absurd opinions, and have, therefore, as much need as the unlearned people, of a superior authority to abate their presumptions, to correct their prejudices, to end their disputes, &c. The account here given of the faults and misconducts of some learned men, though, indeed, it bears hard upon them, yet seems to be truer than one could wish. But supposing it to be altogether true, yet how does it follow, that God must have provided an infallible authority for the sake of such persons? There is nothing in reason or in the holy scriptures to support this conclusion. For if we are to argue from God's perfections, that (even after he has given men abilities and opportunities sufficient both to know and to perform their duty, and they have abused or neglected to use them) he will give them yet greater, where stops this argument? At this rate he must render them incapable both of error and of sin. But this is visibly contrary to fact. And, therefore, we can only conclude with reason from God's perfections, that he will give to all men abilities and opportunities proportioned to what will be required of them in matters of religion; and that, if they fail of the improvement they ought to make of them, they will be here left to the natural effects of their negligence and perverseness, and hereafter will be punished as they deserve.

THESE suggestions of our reason are confirmed by the representations of the holy scriptures. When the Jews were regardless of the frequent admonitions, which God had given them by his prophets, to repent sincerely, and amend their ways, he threatens them at length, that, [o] *the wisdom of their wise men shall perish, and the understanding of their prudent men shall be hid.* He determined to use no other means with them, but to leave them to themselves.

To the same purpose are declarations made by our Saviour in his parable of the unprofitable servant, who having had a talent intrusted with him, neglected to use it. *Take therefore from him, saith our Lord, the talent that hath been unimproved, and give it to him who hath ten talents; for unto every one that hath, shall be given, and from him that hath not, shall be taken away even that which he hath* [p].

AND St. Paul, in his first epistle to Timothy, having mentioned some Christians of that age, as *dotting about questions and strifes of words, whereof cometh envy, strife, railing, evil surmisings, perverse disputings of men of corrupt minds, and destitute of the truth*, bids Timothy *from such withdraw himself* [q]. All which passages plainly shew, that, if men do not use, and duly improve the powers and advantages which God affords them, he will be so far from giving them greater, that he will, in some cases, withdraw even those they had before; or, at least, will not grant them those aids of his holy Spirit, which would have been vouchsafed to them, had they not before been wanting to themselves. So that the argument of archbishop de Fenelon for the necessity of an infallible authority for the sake of learned men, is plainly inconclusive.

UPON the whole; From the very gross error held, and the sinful practice enjoined by the church of Rome, which pretends to infallibility;

FROM the nature of the evidence given for the gospel, as being a revelation from God; and

FROM the express and repeated declarations of the Scriptures of the New Testament;

IT is evident, that God intended to give to every one a right to judge at all times ultimately for himself in all matters of religion.

BUT here it is of great moment to observe, that God, in giving us a liberty and right of judging, doth not grant us a right or liberty of erring with impunity. He does not make it (as some have crudely asserted) a thing wholly innocent to err.

HE will certainly punish for all errors, as well as for other crimes, that might have been avoided by our proper care: and therefore it is highly our concern to take proper care not to err.

[p] MATTH. XXV. 8.

[q] 1 TIM. VI. 4, 5.

TRACT II.

Of the Liberty of publickly worshipping God.

THE right that men have to worship God in public, depends upon their obligation to do it. For if neither reason nor divine revelation required this worship, so that it was a thing quite indifferent, whether men should ever perform it or not, all sovereigns would, in that case, have a right to forbid it to their subjects, either as engaging them in needless expences of time and money, or as tending to produce among them, at least on some occasions, such discords and contests as may disturb the civil state. But if, from right reason and the holy scripture, it evidently appears to be the will of God, that all men should pay a public worship to him, no sovereign can then have authority to forbid or hinder their doing it. Their obligation must certainly be joined with a right to do it. In order, therefore, to settle the latter, the former is necessary to be considered; and that obligation may be clearly deduced from the capacities of mankind, and the relations we bear to God, and to each other.

By a proper exercise of our reason upon ourselves, and the visible world, we cannot fail of attaining to some knowledge of the being and perfections of God, and of the relations we bear to him, as our Creator, our absolute Lord, and continual Benefactor. From whence it follows, that we are obliged to acknowledge his perfections, and address both our thanks and our prayers to him: because our so doing, even in private, tends to preserve and improve in our minds a due sense of his perfections, with suitable dispositions to fear, and love, and endeavour to resemble him as far as we are able; and these were the chief ends for which we were made, and are preserved in being.

BUT to worship God in private, is not sufficient, because he has formed near relations between all men, as having all the same nature, and being the offspring of him the same father. On account of these relations, he obliges us to have an affection for each other, and as he
hath

hath given us the power of speech, in order to our making reciprocally known our thoughts and desires, he cannot but require, that (out of a concern for the welfare of each other, and for his glory, which here on earth chiefly arises from the improvement and happiness of mankind) we should, as often as we have opportunity, join together for his public worship.

FIRST, because, when numbers of men assemble often for this purpose, the examples of some may, probably, have a good influence on others, in regard both to their belief and practice. The notions concerning morality and religion (which in a greater or less degree are common to all men) have, in some of them, been very much improved by education, or their own attention, while many others are so unthinking, and uninstructed, that, merely of themselves, they would hardly ever come to be sufficiently sensible of their obligations to God, or be disposed to perform them. But if men of better knowledge give examples of worshipping God in public, with an appearance of doing it from their hearts, the consequence may, and probably will be, that many of those, who might not otherwise have ever thought of their obligation in this respect, may be induced to consider it, and, as men are generally prone to imitation, especially in any thing to which nature disposes them, they may be led to think, to see, and practise their duty in this point, they may come to believe, to fear and love God.

YET further, the assembling of numbers of men for his public worship, will, naturally, tend to produce in them proper affections towards other men. For by frequently offering their joint prayers to him, as the maker of all things, they will be, naturally, put upon considering, that they, all alike, are his creatures, and all ever under his governing providence; that he, as their common father, allows to all of them an equal access to him, and regards their prayers, not according to their outward condition in this life, but according to their real faith and piety. From which considerations, the wealthy and powerful, certainly, ought to be, and, if they reflect at all, must become, in some degree, sensible, that he, who is acquainted with every the least thing that passes among them, will, at some time or other be the
avenger

avenger of all iniquity and acts of oppression done against those of whom he is the protector, and whose low and indigent station at present he has purposely appointed, that the powerful and wealthy, as being his stewards, may have opportunities of shewing not only their justice, but their compassion and benevolence towards their brethren, in relieving their wants, and doing to them all the good that is, properly speaking, in their power. On the other hand, those in lower life may be naturally led to reflect, that their superiors in dignity and wealth derive these advantages from the providence of God, and therefore, ought, on his account, to be duly respected by their inferiors; who are obliged, with humility and acquiescence, to go through the labours of the station which God hath assigned them for the aid and benefit of their superiors, as well as their tryal and improvement in virtue. Since these dispositions tend to the happiness of mankind, and to the glory of God, no doubt can be made, but that public worship, which is, naturally, in some degree, productive of them, must be our duty. Reason teaches us, that God cannot but require this worship of us, even though we had no engagements to each other, but what are derived from our having had all the same origin from God, the same rational nature, and dependent condition.

BUT when we are considered as imbodyed together in civil society, there arises from thence a further obligation to unite in public worship. For in that state there will sometimes be mercies and benefits, common to the whole society, to be asked of God, and thanksgivings to be paid him, on account of such, when they have been received. Now it visibly is fit, it is morally necessary, that all, who are partakers of these benefits, in their social capacity, should join together in supplications to God for obtaining them, and in returns of due acknowledgment and thanksgiving for having received them. This is so much the voice of nature, that all civilized nations have been sensible, that they were obliged to pay such public homage to God, and their practice was generally suitable to it. They often performed it with great expence, by erecting temples for that purpose with much beauty and magnificence, by maintaining many priests to officiate in those sacred solemnities, by killing great numbers of animals as sacrifices, and burning
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ing large quantities of costly perfumes; all which circumstances shewed their sense of the expedience and necessity of public worship.

BUT this duty is still more plainly enjoined by our Lord Jesus Christ. For all, who embrace his religion, are formed by him into a spiritual society, of which he himself is the head, and of which every one is required, if it be in his power, to become a member, and is likewise obliged to shew that he adheres to that engagement, not only by professing this religion, but also by assembling with his Christian brethren to offer praises, thanks, and supplications to God in the name of our ever blessed Redeemer. They are the more especially obliged to do this, in order to partake of that sacrament of the eucharist, which was intended to be a memorial of his death, and a token of their spiritual union with him and with each other, and a mean of their receiving his gracious assistances: *for we being many* (says St. Paul) *are one bread and one body, for we are all partakers of that one bread* [r]. From whence it is plain, our Lord intended to require, that all Christians should join together, as they have opportunity, in public worship. It is a part of that confession of him before men, which he requires of us, and a wilful neglect of it, without a just reason, is what he will not fail to resent: for whoever refuses, or totally neglects, to do those public actions, which imply an acknowledgment of the immense benefits of our redemption, and were appointed for that very purpose, may, with reason, be considered as greatly wanting in his duty to his Saviour, and will be punished for this neglect. On the other hand, that men might also be engaged by considerations of a different kind to public worship, our Lord has promised, that wherever any number of them, even two or three, shall be *gathered together in his name* [s], he will be peculiarly present with them, and graciously disposed to grant their requests for the aids of his holy Spirit, as far as he knows their case to require them. In the temple of Solomon, God was pleased to exhibit a sensible mark of his immediate presence by a radiant light or *glory* in it [t]: but, under the gospel, men are to be influenced by their reason, rather than by their senses; and, therefore, no such vi-

[r] 1 COR. x. 17.

[s] MATTH. xviii. 20.

[t] 2 CHRON. vii. 1, &c.

fible sign of the divine presence appears in our places of public worship. We, however, may be assured, that our Saviour is not less present there, for all the purposes of spiritual assistance and consolation; which benefits are the greatest that men can possibly enjoy while they are on earth; and, therefore, they ought to be proportionably solicitous to render themselves partakers of them. And that they might not fail of them for want of knowing the fittest times for this public worship, the apostles of our Lord, inspired by him, appear to have set apart *the first day of each week* [u], more especially for this important purpose, and in commemoration of our Lord's resurrection from the dead. Accordingly the primitive Christians observed those days with a proper solemnity and strictness of devotion: *they continued not only in the apostles doctrine, but in their fellowship or communion in breaking of bread, and in prayers* [w], that is, in all acts of public worship. St. John, the beloved disciple of our Lord, when, towards the close of his life, he was so infirm that he could not walk to church, caused himself to be carried thither in the arms of his disciples. And the author of the Epistle to the Hebrews earnestly presses them *to hold fast the profession of their faith—without forsaking their religious assemblies* [x]. He did not allow even the danger of their lives, in those times of persecution, to be an excuse for absenting themselves totally from this great duty of public worship.

Now from the obligation that all men are under to assist at the public worship of God, when it is duly performed, they must have a right to meet together, and perform it, as they ought, without suffering any punishment, molestation, or hindrance whatsoever, from any sovereign or other person, upon that account. For what God obliges any person to do, no one else can have a right to hinder, or, by any means, deter him from doing. All methods of restraint, or even menaces used to that purpose, would be acts of opposition to the will of God. Every sovereign, indeed, is, by his office, the guardian of the peace and welfare of the nation, over which he presides; for securing which, it is fit that he should have a watchful eye on all numerous assemblies of

[u] ACTS xx. 7.

[w] ACTS ii. 42.

[x] HEB. x. 23. 25.

his subjects, even those which are professedly held for the worship of God; since it is possible, no doubt, that such assemblies may sometimes be made occasions of inciting those who assist at them to disturb the peace of the civil state. The forms of public devotion there used, or the instructions and exhortations given on the subject of religion, may have things mixed with them, that may tend to inflame the minds of the worshipers against the person of the sovereign, or against other religionists under his protection, or against the constitution of the civil state. Some of these things have been actually done in such assemblies for divine worship even by those who have at the same time professed to be, and really have been in other respects, of the true religion. An erroneous zeal has put them on proceeding to great disorders and outrages against those Heathens or Jews, or heterodox Christians, whom they deemed to be enemies to themselves and to God, on account of differences in religion. They have not only ridiculed and reviled, but insulted them, and disturbed their devotion; they have pulled down or burned their temples, or other places of worship[y]; they have even, in some cases, affronted and opposed the civil governors on account of religion.

BUT all outrages or disorders of this kind, and even all things that tend naturally to produce them, may justly be restrained by the civil sovereign, because they are contrary to the ends of civil societies, as well as to the nature of true religion. In order to the safety and welfare of mankind, and to the improvements possible to be made in their present condition, God hath certainly designed, and visibly formed them to live together in civil states, which will, generally, protect their persons and properties against violence and rapine, and will give rise to many conveniencies and improvements in knowledge as well as in arts, which could not be had if men lived in a state of separation from each other, or only in smaller companies together. But as such civil states cannot long subsist, unless all the members of them be quietly submissive and obedient in all things lawful to their temporal governors; we may therefore with reason infer, that God does not require any thing of men, as a part of their religion, that must or

[y] Vid. Divi Ambrosii vitam a Paulino conscriptam.

can justly interfere with or hinder their paying such submission or obedience; for that would be to act inconsistently with his own design. Accordingly, right reason discovers nothing of this sort in religion: it only directs us to believe in God, to acknowledge his perfections, to express our hopes of his protection and beneficence, to return our thanks for the benefits he confers upon us, and to yield as full and as constant an obedience as we are able to his moral laws. To all which the Christian revelation adds, that we must believe the divine mission and authority of Jesus Christ for the redemption of mankind, and their reconciliation to God; must profess this belief, and worship him before men, in order to convert them to the same religion; must offer our praises and supplications to God in his name, as our only mediator; acknowledge him in that high character of God, which in the scriptures is ascribed to him, and practise the moral laws with the reinforcements he has added to them; and must practise those positive sacramental institutions also, which he hath appointed as means of receiving his grace, and of our spiritual union with him and with each other. All these things may at any time be done, in a public manner, without producing, from the nature of those actions, considered in themselves, the least disturbance to civil societies. It must, therefore, be the intention of God, that these societies should not be at all disturbed on account of religion. From whence it follows, that if any person, from a view of promoting what he may think to be the interest of true religion, or of gaining to the professors of it any worldly advantages, shall take occasion, from the celebration of public worship, to put them upon any actions that disturb and hurt the civil state, he will not be justified by his really having this intention: for no men, merely on account of their being of the true religion, have, by the appointment or will of God, a right to wealth, to honours or power in a civil state. Those things are not necessary to the right performance of their duty to him, or to their attainment of eternal happiness. They may, on the contrary, sometimes hinder them from attaining or pursuing those great ends, and may, in that case, be very hurtful to them: on which account God does not in the Christian dispensation ever make a general promise to grant these temporal advantages even to his faithful servants, whom, on the contrary, he often
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causes to be destitute of them, that their hearts may be the more effectually fixed on a life to come. He doth not, indeed, forbid the professors of the true religion to possess these advantages, when they can without any unlawful courses attain them. He approves their possessing them, when they make use of them to promote his service and the good of mankind; and when he foreknows that they will act thus, or when he designs to try them, or has, otherwise, purposes to serve by so doing, his providence may cause things to work together towards their attaining them. But a right to possess them does not arise from his general or particular grant. It depends on the transactions of men with each other. And, therefore, if any of them use force, or fraud, sedition, corruption, or any such unlawful methods, in order to acquire to any professors of the true religion, wealth, honour, or power in the civil state, to its disturbance or disadvantage, and against the will of the sovereign; he hath, in all cases, a right to prevent and punish their attempts. He may endeavour to prevent them by requiring that every thing, either of a seditious or inflaming nature, shall be left out of the public prayers and preaching. For though, indeed, those of the true religion must have a right in their public worship to express the articles of their faith, and give reasons for them against opposite religionists, because their doing so may be necessary for the instruction and confirmation of their own people; yet nothing invective, insulting, or abusive against persons of other religions should be mixed with their public worship. If the ancient prophets, who were inspired by God, have, on some occasions, used language of this sort, when he, who knew the hearts and circumstances of men, saw this course to be necessary; yet that seems to be no sufficient precedent for uninspired persons to do the like. The apostle directs Christians *to give an answer to every man that asketh them a reason of the hope that is in them, with meekness and fear* [y], that is, in a manner as inoffensive as possible. This is more especially the duty of those who are permitted publicly to profess the true religion, when it is different from, and very opposite to, that which obtains among a great majority of the people in that country. And, in order to be secure of

[y] PET. iii. 15.

their practising this duty, the sovereign may send persons to inform him of what passes in every such worshiping assembly, of which he hath any suspicion; he may oblige them to perform their worship with open doors, and hath a right to punish those, whom he finds to be guilty of any breach of this duty, in proportion to the nature of their offence.

BUT, in case that men of the true religion do nothing more than meet together to worship God seriously and inoffensively, according to the obligations of this religion, no sovereign can have an authority or right, either to hinder them from so doing, or to punish them on that account; because this conduct on his part, would (as I have said) be assuming an authority to restrain them from doing what God, the fountain of all authority, commands them to do; a supposition plainly absurd. Accordingly, our Saviour's apostles, Peter and John, when forbidden by the Jewish council to preach any more in the name of Jesus, with just freedom, said, *Whether it be right in the sight of God to hearken unto you, rather than unto God, judge ye* [z]. And the like reply will always be just with regard to publicly worshiping God. To practise this, according to the true religion, men cannot but have at all times a right; because, as I have shewn, they are under an obligation to do it, whenever they conveniently can, at the times appointed by God himself, or by those persons whom he has authorized to make such appointment.

MEN may, indeed, lawfully abstain, for a time, from coming to this worship, when they are employed in affairs of necessity, or of great importance to the public weal, or even to that of private persons; for *the sabbath*, says our Saviour, *was made for man, not man for the sabbath* [a]: and again, *I will have mercy and not sacrifice* [b]. He preferreth such actions of beneficence towards our neighbours, as were necessary at particular times, to the bare observance of any positive institutions in religion. When the former of these is, of necessity, to be done, the latter must be omitted. Accordingly, if the public safety or advantage, or even those of private persons, do, in any great degree, make it needful that men should abstain, for a time, from God's

[z] ACTS iv. 19.

[a] MARK ii. 27.

[b] MATTH. xii. 7.

public worship, we may conclude that he will then allow it; and, on such occasions, the sovereign may justly command them to do things for the public service that may be inconsistent with their attending such worship. The marching of armies, or working towards fitting out fleets for the public defence, on days of public worship, or acting in a siege or battle for repelling enemies, or performing any kind of necessary labour, are things, beyond all question, lawful, when commanded by a sovereign. But wholly, or for a long time at once, to be absent from public worship, when there is not a sufficient reason for it, cannot be lawful, and, therefore, no sovereign can have authority to require it of his subjects.

He cannot justly do it, even though this right of public worship may, by the misconduct of some other persons not engaged in it, be made the occasion of disturbances and tumults in the civil state. These may sometimes happen, when turbulent men, incited by their zeal for a false religion publicly received in a country, oppose and hinder the professors of the true one in their worship, and use violent means for that purpose. Thus the Jews and Heathens did, at several times, in the first age of the Gospel, at the preaching of which they themselves raised tumults, and threw the blame of them on the apostles, whom they represented as *men that would turn the world upside down* [c]; but civil disturbances, which, in reality, are not caused nor continued by the fault of worshipers according to the truth, cannot be justly charged upon them, nor give reason sufficient to a sovereign for hindering them from the profession or quiet exercise of their religion. He ought, by fit methods, to restrain the persons by whose means or incitement those tumults have been raised. But he cannot have a right to prevent such disorders by totally restraining the innocent and inoffensive professors of the true religion from worshipping God in public agreeable to it. For the peace of civil society, though it is, indeed, of great importance, is not to be obtained by unlawful means. Now his hindering persons of the true religion, for any long time, from peaceably worshipping God in public, must be unlawful; and, therefore, no sovereign ought ever to do it.

[c] ACTS xvii. 6.

THE chief difficulty on this subject regards those persons who err, as to points of importance, in religion; and the question is, whether a sovereign be obliged to permit any such erroneous persons to worship God in public, and, by their examples, as well as instructions and exhortations in that worship, to seduce others, and propagate their errors as far as that liberty will afford them opportunities of doing it? The Romanists and other intolerants deny this, and, on the other hand, earnestly contend, that the use of penalties against blameable errors in religion, is not only lawful, but expedient and necessary on the part of a sovereign: for which opinion their arguments have been, chiefly, these:

FIRST, that errors in religion, when publicly maintained after proper declarations and admonitions given to the contrary by the Catholic church (which errors are then to be considered as heresies) are, in many cases, sins of a heinous kind against God: for some of them (as those of the Gnostics, the Manicheans, and the like) detract greatly from his honour, the preservation and maintenance of which ought to be an object of the highest concern to all rational agents. If they be obliged to vindicate the honour of a father or a friend, how much more that of God, who has a much higher and more endearing relation to them, and whose honour is greatly violated by a public profession of doctrines, either blasphemous or plainly false and contrary to divine revelation? And most of these errors must have proceeded from a grievous corruption, which might have been avoided, both in the understandings and in the wills of the persons concerned: and they lead to great defects and misconducts in the practice of religion, and tend greatly to hurt the credit, and to disturb the peace, order, and good government of his church, on which accounts they must always be the objects of God's indignation. Such worship, therefore, performed by such persons, ought not to be permitted.

IT is further to be considered, that such heretics are very dangerous to the spiritual welfare of many well-disposed people in common life, who, being unskilful, and generally unguarded, may, by the artful insnaring discourses heard in their public worship, be unavoidably infected with the venom of their heresy; and these wrong notions in religion will, naturally, carry them into ill practice, and be productive of

of their eternal ruin. Now Beza (p. 96.) observes, that it is a greater sin to kill the soul of any person than his body. On which account, as the guilt of these heretics is the greater, so the case of the seduced is the more to be pitied, and they ought to be guarded with the greater care from such pernicious infection.

INDEED charity requires, that even those heretics themselves ought, if possible, to be reduced to a sound mind, and be thereby saved from eternal destruction, though it be by their undergoing some temporal sufferings. But if this their spiritual welfare, through their pride, obstinacy, and other evil dispositions, can but seldom be procured, yet the safety of the civil state ought, at least, to be consulted, which heretics are, in general, likely to disturb by their ambition and love of being at the head of state factions, which are easily formed out of differences of religion. Hardly any remarkable heretic but hath fallen, and will be likely to fall, into a turbulent and seditious conduct [d].

AND, besides this, when they are numerous, and not punished as they ought to be, they tend to draw down God's indignation upon the civil states where they are suffered. On all these accounts, the sovereign, as deriving his authority from God, and representing him on earth [e], must be authorized and obliged to maintain his honour, and provide for the welfare, both spirital and temporal, both public and private, of the people committed to his charge.

THE intolerants observe further, that civil penalties are means not improper to be used for this purpose, because these may, sometimes, by the grace of God, cause heretics themselves to consider, to see, and to quit their errors; as St. Austin (see Bayle's Com. p. 86) assures us experience hath often shewn. But even though penalties should not have this effect of converting heretics, yet they may be justly inflicted on them, for having, by wilful negligence or passion, corrupted or perverted their own understanding, or at least they may have a good effect in preventing, by a proper terror, many weak persons from being so easily corrupted by these heretics, who, with that view,

[d] Multo minus dubitari potest quin religionis & pietatis cura ad magistratum pertineat, quia, nisi sancte & integre observetur, fieri non potest quin iræ Dei, et proinde omni calamitatum generi, respublica obijciatur. Beza 24.

[e] Εἰκὼν Θεῷ τὰ πάντα κοσµῶντος.

ought either to be kept under close confinement, or be driven out of the sovereign's dominions, or, when it is necessary, ought to be punished even with death.

MALIGNANT heresies have, by these means, in many instances, been suppressed and extirpated; by which otherwise not only great numbers of private persons, but even whole nations, would have been over-run and corrupted. Spain hath been by these means secured from the propagation of these heretical doctrines, which, soon after the abdication of Charles Vth, were beginning to take root there. France has, in great measure, extirpated and suppressed the like, after they had much spread themselves, and caused great commotions and much bloodshed in that country. The dominions of the house of Austria, and the kingdom of Poland have, by the same means, cleared themselves, in great measure, of these noxious weeds; and so might other countries have done, if due care had been taken. And, therefore, if sovereigns do not imploy these penal methods, when they are in their power, against false religions, they may justly be blamed for not performing their duty. These, say the intolerants, are clearly the dictates of natural reason, supported by known facts.

AND they are further confirmed by divine revelation, which evidently prescribes the civil punishment of such errors in religion, and such ill practices occasioned by them, as are in their nature clearly repugnant to sacred truth, dishonourable to God, and very hurtful to men.

ONE ancient error of this kind was, that men (seeing the great benefits derived to them from the heavenly bodies, together with their beauty and the regularity of their courses, and not sufficiently attending to the suggestions of their reason) were led to take them for deities, and paid an idolatrous worship to them. That a stop might be put to this idolatry, greatly injurious to his perfections, God expressly ordered it in the law of Moses to be severely punished, even with death, which, accordingly, was done, in the Jewish state, by Moses, Elijah, Hezekiah, and others: and Job (who, though a stranger to the commonwealth of Israel, yet had the advantage of divine revelation) declares in like manner, that *this idolatry ought to be punished by the judge*[f].

[f] JOB xxxi. 28.

The word pelili פלילי, used in the Hebrew for judge, is the same (except in the difference of number) that is used in the 11th verse of that chapter for the judge in case of adultery, who, in this case, was certainly to inflict civil punishment, and probably even death, on the criminal; and, therefore, in all appearance, he was to do the same against idolatrous worship. And Job plainly declares, that this offence was to be punished by the magistrate, as a disrespect and affront to the perfections of God; for, he says, that if he had practised this idolatrous worship, he should have denied, that is, he should have failed very greatly in the respect due to God that is above. Now if an author divinely inspired assure us, that the magistrate in that country was authorized, and even obliged by the light of reason, to punish this offence as criminal, though it might, in some cases, be founded partly in error, and the prejudice of education, we ought, by a parity of reason, to conclude, that he might, and all other sovereigns both may, and ought to, punish other blameable errors, and practices proceeding from them, against true religion.

If there be not much said to this purpose in the Scriptures of the New Testament, the intolerants say, we are not to wonder, because this point had before been sufficiently settled by natural reason, and by the holy Scriptures under the Mosaical dispensation, and because our Saviour did not assume any civil power. Yet he himself, in a remarkable case, when only religion was concerned, did, in order to vindicate the honour of God, make use of some degree of force against those *who sold sheep and oxen, &c* [g]. in one of the outward courts of the temple at Jerusalem, even when their practice was permitted both by the Jewish priests and by the civil governors. And in one of his parables, wherein he seems to have represented his church as it should be in future times, supported by the civil power (see August. Epist. ad Emerit. 164.) he directs that, if men should not acknowledge the truth of his religion, or would not comply with the gentle invitations made them to come into it, they should be forced so to do. *Compel them to come in*, says he, *that my house may be filled* [h]. He also threatened, that the temporal judgments of God should fall upon the

[g] JOHN ii. 17.

[h] MARK xiv. 23.

Jewish nation, as punishments for their having rejected him, in like manner as the evangelical prophet Isaiah had declared, *that the nation which would not receive the future Saviour, should perish* [i]. And, after his decease, his apostles, though not vested with any civil authority, yet used the miraculous heavenly power, of which they were possessed, for inflicting bodily punishments on divers persons, if not for bare errors in religion, yet certainly for offences committed, not against the civil state, but only against the apostles, as ministers of Christ, and governors of his church. At the word of St. Peter, death came upon Ananias and his wife Sapphira [k]; Elymas was struck with blindness by St. Paul, for endeavouring to hinder the conversion of Sergius the proconsul to the faith of the Gospel [l]. And it is probable, that the same apostle inflicted bodily penalties upon Hymenæus and Alexander, who had been guilty of blaspheming, *i. e. speaking evil of the Christian faith* [m]. (Bayle Com. Tom. II. 55.) Since our Lord inspired his apostles, who were but private persons in the civil state, to exert such authority of punishing those who were offenders only against the true religion, we may still more justly presume, that he will authorize and even require sovereigns to do the like, by their civil power, in pursuance of the advice of those who have succeeded to the apostles in the government of his church. And, in fact, this doctrine is laid down by St. Paul, when he represents it to be the duty of every sovereign, as the minister of God [n], to use the sword with which he hath intrusted him for the punishment of evil-doers. (St. Aust. Epist. clxiv. ad Emerit. apud Bayle 2d. Com. p. 131.) For heresies are, by this same apostle [o], (see Bayle 2d. Com. 337.) represented as works of the flesh, and, therefore (as Bossuet bishop of Meaux justly argues, 6me Advert. p. 243.) they are by this text declared to be punishable by the civil sovereign. See Bayle's Com. p. 131. 139—141. *ibid.* 338. 360, &c.

AND accordingly, as soon as the secular powers became Christian, they thought it their duty to enforce the sentences of the church against heretics by temporal penalties. This was done in many instances by Constantine the Great and his successors (see Prynne p. 36, 39.) in the

[i] ISAIAH vi. 12.

[m] 1 TIM. i. 20.

[k] ACTS v. 10.

[n] ROM. xiii. 4.

[l] ACTS xiii. 8. 11. and Beza, 146.

[o] GAL. v. 19.

eastern empire. They commanded that the heretics, who denied the Nicene faith, should be driven out of the churches; and sent the chief leaders of them into banishment: and the like course of adding civil penalties, by way of inforcement to the bishop's sentence of excommunication, for heresy, &c. hath been continued ever since, and is to this day, in almost all parts of the Christian church, even among the Protestants, as well as in the communion of the church of Rome.

IN a word, say the intolerants, it is certainly true, that since the temporal princes have received the Gospel, the far greater number of Christians in every age, both fathers and bishops of the church, and the temporal powers and governors in all nations, even the pretended reformers, Luther, Melancthon, Calvin, and Beza, &c. have all agreed in the lawfulness of employing secular punishment against those whom they deemed to be Heretics, and have practised accordingly when they had it in their power.

BEFORE we consider the answers that have been given to these several arguments, it will be proper to form a right state of the question, by observing in what cases, and to what degree, the friends of liberty think that force or restraint may justly be used in matters of religion; and in what cases, and how far an indulgence or toleration, as to public worship, and profession of opinions therein, ought to be allowed to persons in error concerning religion. (These points have been formerly much disputed, even amongst Protestants [q], and are not, at present, so well settled among all of them, as things of so much importance to the welfare of mankind might be wished to be.) In order to clear the way towards the truth, the first thing to be observed is, That no person ought to be, with impunity, suffered openly to deny, either that there is a God, or that the world is governed by his providence, or that men will ever be punished by him for the ill actions they have done.

[q] See de Meaux Hist. Variat. Tom. II. p. 46, 47. An account of the sentiments of Luther and Calvin, and others of the first Protestants, about the punishment of Heretics.

See Bayle's Dictionary English, word ST. AUGUSTIN, p. 566. an account of a Synod of the Walloon churches held at Amsterdam in August 1690, wherein this proposition, "That the magistrate has no right, by virtue of his authority, to suppress idolatry and hinder the progress of heresy," is one of those which that Synod solemnly and unanimously declares false, scandalous, and pernicious, equally destructive of morality and religion, &c.

For an open denial of any of these great truths must be very detrimental to civil society, the peace and welfare of which must always depend greatly on the influence which these principles have on the minds of the people. Every one, who reflects on the circumstances of mankind, or is acquainted with their history, must be apprized, that, in several cases, great mischiefs may be done, by poison, by fire, and other secret methods, to private persons, and even to princes and states themselves; and yet the persons who do them, may either be concealed from the knowledge of men, or have probable hopes of avoiding punishment from them. Now, in such cases, nothing can have weight enough to deter men from crimes, that may sometimes produce to those, who commit them, great present advantage, but only the fear they have of God, as one who knows all things, hath infinite power, and will certainly, at some time or other, inflict severe punishments on all wicked persons. That this fear, if once deeply rooted in their minds, will work strongly upon them, Lucretius himself, as much as it was against his Epicurean scheme, makes no difficulty of confessing in the following lines [r]:

*Tho' human punishments should be away,
Men under piercing terrors often lay,
Conscious of guilt, they suff'rings for it fear
Worse after death, than any can be here;
And such as endless to them now appear.*

It appears from hence that these were known to be the general sentiments of mankind. And of this, the wisest legislators and philosophers of Greece and Rome were so sensible, that they endeavoured by various means to make strong and lasting impressions on their people, of hope and fear with respect to the Gods. And what good effects

[r] Quæ tamen etsi absint, at mens sibi conscia recti,
Præmetuens, adhibet stimulos, torretque flagellis:
Nec videt interea qui terminus esse malorum
Possit, nec qui sit malorum denique finis;
Atqui eadem metuit magis hæc ne in morte gravescant.

Lib. iii. ver. 1031.

these impressions had, the Roman history remarkably shews in divers instances of persons, who, from the terror of their consciences, and the fear of divine vengeance, discovered the most dangerous and secret conspiracies against the state, and were kept from seditions, mutinies, and rebellions. Dionys. Hal. Livy, and Machiavel [s]. Polybius, for these reasons, thought it was very wrong in those persons of his age, who were for unsettling the Roman people as to their notions of punishments to be inflicted in a future state; because they had, at that time, a very good effect upon the Romans, and the want of them had an exceedingly bad one upon the Greeks. Tully (de Legg. ii.) doubts not to affirm, that opinions about the providence of God, were of very great use, as being what gave the chief force to oaths, made leagues and covenants to be observed, and kept up society among men. In the first book de Nat. Deor. the same author says, that if piety were subverted justice itself and human society would be destroyed. Plutarch affirms, that the first thing, and of the most importance in the constitution of laws, is to establish the belief of the Gods [t]. And, among the moderns, Machiavel, how little soever he was concerned for religion on its own account, yet, for the sake of civil government, declares, and inculcates his sentiments about keeping up the great principles of it in the minds of the people; “ It will be found, says he (Disc. on Livy, chap. xi.) by whoever considers the Roman history, how useful a thing religion is to the government of armies, to the uniting of the people, to the keeping men good, and to the deterring them from being bad.” He, in the same chapter, observes, that as strictness in divine worship, and a conscientious regard for oaths, are great helps to the advancement of a state; so the contempt of the former, and the neglect of the latter, are the natural means of its destruction.” And again (chap. xii.) he says, “ that those princes and commonwealths, who would keep their governments intire and uncorrupted, are, above all things, to take care of

[s] Vid. Dion. Halicarn. de judicio Publii et Marci Tarquin. Lib. v. Machiav. Disc. on Livy, chap. xii, xiii.

[t] Ἀλλὰ μὴν ἦγε καὶ Κολώπης ἐπαινεῖ διατάξεως τῶν νόμων, πρῶτον ἐστὶν ἡ περὶ Θεῶν δόξα, καὶ μέγιστον, κ. τ. λ. Plutarch. adv. Colot.

“ religion and its ceremonies, and to preserve them in due veneration.
“ For in the whole world there is not a greater sign of eminent ruin,
“ than when God and his worship are despised.”

UPON the whole, it is very certain that a belief in God, as the governor of the world, a fear of him, as the certain punisher of all wicked actions, with hope and trust in him, as the assister and rewarder of the good, are principles greatly conducive, and, morally speaking, even necessary to the lasting welfare of civil societies. For which reason, the governors of them, in order to their preservation, must not only be authorized, but obliged, to keep up those principles, as much as possible, in the minds of their subjects: and accordingly, those persons who profess to have none of this belief of themselves, and endeavour to extirpate it from the hearts of others, may be justly punished for so doing, and restrained for the future by any methods that will be necessary and probably effectual. They may either be closely imprisoned, or banished out of the society, and forbidden to return under penalties sufficient to prevent their so doing.

AND, from the same principle of a regard to the public welfare, a like course may be taken with all those that hold any other errors which naturally tend to disturb or hurt the civil state. Such are they who maintain, “ that no toleration is to be allowed to, or faith kept
“ with, heretics, but that they are to be, in all ways, molested, oppressed, harassed, and persecuted, even to death; and that heretical
“ princes themselves may justly be deposed and murdered by their subjects at the command of a foreign ecclesiastical potentate.” These professed errors, naturally productive of suitable practices, when they are held by great numbers of the people, can never consist with the lasting peace and safety of any country; and, therefore, they who profess them, and endeavour their propagation, may justly either be sent out of the country, or, while they remain in it, may not be permitted to hold any assemblies for their public worship, in which instructions may be given, and endeavours used to spread these principles among the people. One must here add, that there are still some other persons to whom the same reasoning justly extends: I mean those who, though very different from the former in their sentiments of religion, yet hold errors, concerning it, directly tending to weaken and
subvert

subvert any civil state. Such are those who maintain that dominion and property are founded only in divine grace, *i. e.* belong only to those persons who are right in their religion, and endued with divine grace: that oaths are unlawful to be taken on any occasion; that all, even defensive, war, and the bearing any magistracy, are things inconsistent with the duty of a Christian. Upon the principle of securing the public welfare, all persons, thus erroneous, may be restrained from holding assemblies for their public worship; may be closely confined, or sent out of the country. Their full persuasion of the truth of their notions, if innocently contracted, may, indeed, be an excuse for them in the sight of God; but is not to be regarded by a civil sovereign, because he cannot be assured of the truth of this circumstance; or, if he could, yet their sincerity in their error would not give them a right to hurt the civil state, nor will it justify him for permitting them to do it. With regard indeed to persons of this latter class of errors, and even to those of the former, one may justly allow, that if their number be not large in proportion to the other inhabitants of a country, and there be not much danger that they should make many converts to their errors, they may, in that case, be connived at and tolerated; especially when, in general, they are loyally and soberly disposed, and useful for carrying on trade and manufactures. But to this toleration, connivance, or liberty, they, strictly speaking, have no right; they may justly be restrained from holding assemblies for public worship, or put under confinement, or sent out of the country, whenever a regard to the public welfare and safety requires this to be done, in order to prevent too great an increase of these sectaries. Thus far it seems to be evident, that civil penalties or restraints may be justly used against persons erroneous in religion.

BUT here, most of the friends of liberty stop: they do not allow, that the same course may be justly taken in the case of errors which, without being in themselves, or by plain consequence, any way hurtful to the civil state, are only repugnant to sacred truth, made known by reason, or by divine revelation. They think that against persons, by whom errors of this latter kind only are held, no force or civil punishment can, merely on that account, be justly employed, either

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in the way of punishment, or even of restraint of them from public worship, with an intention to make them embrace the truth in religion.

Not but these friends of liberty admit, in the first place, That divers errors of such a nature may be very blameable in the sight of God, when they have proceeded from a great corruption in the understanding, and that corruption derived from their ill affections and passions not resisted and governed as they ought to have been. If any particular writer in our country has too crudely and generally asserted the innocency of error, this never hath been the doctrine of Protestants in general. Chillingworth is express in asserting the contrary, and so is bishop Taylor, and in this point all judicious Protestants agree. They readily own, that such errors as we are now speaking of, though not liable to civil punishments or restraints, are yet sinful in the sight of God; and, in case of impenitence, will, in due time, be punished by him.

THE friends of liberty are likewise sensible, that civil punishments and restraints, might, in some cases, be of advantage in preserving well-meaning but weak persons from being corrupted by heretics. The cause of heresy, though bad at the bottom, yet, in appearance, may often be such, as that several plausible things may be said in its behalf by artful men, who may thereby work upon weak ones. Now this bad effect might, undoubtedly, be in great measure prevented by imposing silence on heretics, as to public worship; by imprisoning them, and hindering all access to them; by sending them out of a country, and hindering the importation of any books they write.

IN the last place, the friends of liberty are also fully apprized, how very great effects, civil punishments have, in many cases, actually had against the professors of the true religion. They know that the cruel proceedings of the inquisition of Spain, during the reign of Ferdinand and Isabella, and of Philip the II. were the means of utterly rooting out the Protestant religion from thence, when it was otherwise likely to have taken root, and increased very much. In France, the Protestant religion hath, by the like means, been almost wholly suppressed: though the Papists in that kingdom have not admitted the inquisition into it, nor have lately much used the horrible punishment of burning for what they call heresy; which punishment against it, they yet contend

contend to be lawful, nor have, so often as formerly, put lay Protestants to death in any way, yet they have used methods against them nearly as hard to be borne; such as military execution, abuses practised to their wives and children; long doleful imprisonments in dungeons or the galleys, &c. And these methods have had too much success against the Protestant religion; so that, in course of time, it is in the utmost danger of being utterly extinguished in that kingdom: as it is also likely to be, by similar methods, in most part of the Austrian dominions, and in divers other countries.

No doubt therefore can be made, but that, in the natural course of things, the like effects that have been produced against the truth in so many places, might also be prevalent against error, if the same methods of restraint and civil punishment were used. For error can never be so well formed in itself as to make a stand against them, as truth, if other things are equal, will be.

BUT though the friends of liberty are sensible of these things, yet most of them maintain, that, against men, who hold errors in religion, not detrimental to the civil state, no civil force or punishment, nor any restraint from public worship, can justly be employed; because arguments of much greater weight against the use of the like methods, &c. in the case of such persons, may be clearly deduced, both from natural reason, and from the gospel of our Lord Jesus Christ.

FROM the light of mere reason, they argue thus. The end of instituting civil societies was not, that men might know and practise true religion; for those things depending on themselves only, they could have done them in a state of nature. It was the necessity of being protected in their persons and properties against violence and fraud, that induced them to form those societies, and to grant to the governors of them authority to employ the joint force and wealth of the whole society, or such a part of it as should be needful, in protecting and securing the person and property of each particular member from all injurious treatment. There is no reason to suppose, they intended to grant to their governors any authority to judge for them about matters of religion; for that is a right which no man himself can lawfully give up or transfer to another; much less is it supposable that they would grant to their governors an authority to force them by violence and

terror, to act against their judgment and conscience, as to the truth of religion.

ALL that can be with reason supposed, is only that they would grant their governors authority to concern themselves in preserving among the members those capital principles of religion, without which civil society itself cannot long subsist; viz. a belief of God's existence, of his providence over human affairs, and the certainty that he will some time or other, punish men, for their evil actions. More than this, there is no reason to think, that, at the institution of civil society, men designed that their civil governors, who derive all their authority only from their consent, should ever interpose in matters of religion, when not detrimental to the civil state, but should leave the belief, profession, and practice of all such kind of religion, wholly to the liberty of each single member of the society.

THIS argument, most of the friends of religious liberty think to be in itself sufficiently conclusive in favour of it. Yet, as some persons indeed have not been so fully satisfied as to that point, that men must be supposed to have had no other view at all in entering into civil society, but merely the securing their persons, properties, and temporal interests; they think that a number of men, as rational agents, conscious of their obligations to God, would have also a view to promote his glory, and the salvation of men, in all proper ways, to which civil society would give opportunity; and that from God, and even from the reason of the thing, the governors of them must be supposed to be vested with authority for this purpose. Now whether this supposition be in some respects to be admitted or not; yet, to prove that it will not ever justify the use of any violence or terror to bring men to the true religion, the friends of liberty, against that notion allege, that if God should be supposed to have conferred, by the law of nature, upon civil sovereigns an authority to inflict punishments on any person for errors in religion not hurtful to the civil state, the consequences or effects that must naturally follow from the grant of this authority, would be greatly repugnant to his own perfections, and to the happiness of mankind: And therefore this supposition ought not to be made, nor can any sovereign be by the law of nature justly vested with this authority.

FOR,

FOR, in the first place, as there will probably be at all times many more sovereigns of false religions than of the true one, civil punishments will be much oftner employed against this true religion than on its behalf: and sovereigns who think themselves in the right, and authorized by God, when they meet with much opposition from men, will be for the most part disposed, if not at first, yet in length of time, to use rigorous punishments on such occasions, against the professors of the truth; they will inflict heavy fines or confiscations, banishment or death, often preceded or accompanied with torments, by which punishments these persons will be almost irresistibly compelled to the profession of known errors, against their consciences, and against the declared will of God. We cannot but be sensible how many persons, such as archbishop Cranmer, Sir John Cheeke, &c. have miserably fallen in this dangerous way: and though we may hope that God will have some regard to the weakness of men under such terrible trials, yet we cannot be certain that he will pardon them; for it is undoubtedly a great sin to deny the truth of God, even when it is to save their lives. It implies a distrust of God's providence, and the supports of his grace, &c. And it is directly contrary to our Saviour's command, *that we should confess him before men* [u]; our disobedience to which precept, he plainly threatens, shall be followed with our damnation [w]. *He that will thus save his life, shall lose it* [x]. So that the use of such punishments must be of a very dangerous and pernicious tendency.

SECONDLY, when such compulsive punishments are used against error in religion, they will do very little or no good; they probably will do a great deal of mischief. For they cannot, in any degree, influence the understanding, so as to make men really see things otherwise than they do. If indeed the chains that are put upon the body, could restrain the operations of the mind, or the flames that burn the former, enlighten the latter, there might be some reason for employing fire or force against error in religion. But constant experience shews, that no effect of that kind can ever be produced by them. They will, probably, and generally have a quite contrary one. Men will

[u] MATTH. x. 32.

[w] MATTH. x. 33.

[x] MATTH. xvi. 25.

hardly ever be disposed to see, or think that to be the truth, for not seeing which, as it is maintained by the sovereign, they are so hardly used, and as they will always conceive unjustly, they will never think well of any arguments offered by their persecutors for it. They will not attend enough to apprehend the true force of them. Now outwardly to profess any thing, though it be really true, which they think in their hearts to be certainly false, will be so far from *pleasing God, who knows the heart* [y], and requires that men should always profess and act agreeably to what passes in it, that they will, by so doing, highly affront and offend him.

THIRDLY, such punishments, when used in any Christian country, will in great measure prevent the unlearned or ignorant part of mankind from having any credible grounds of faith as to the Christian religion. For these men must (as I have shewn in the first Tract) depend for those evidences, on the probity and veracity of learned men, who must inform them of many circumstances and facts relating to the origin and propagation of this religion, and to the genuineness, safe tradition, and just version of the holy scriptures which contain it. These facts, the unlearned, of themselves, cannot know. But how can these unlearned persons depend justly on the testimony and veracity of the learned, when they see these latter to be under the danger or dread of suffering rigorous penalties, if they give any accounts of things, that are at all contrary to the religion that prevails in their country? In that case can there be any sure or reasonable dependance on the probity of such men, that they will give right accounts of things?

III THERE will always be ground for suspecting, that from a fear of suffering, if they should say any thing contrary to the religion of the country, they will misrepresent and give false accounts of antient facts that concern this religion: of which accounts as unlearned men will know themselves unable to judge, they will apprehend that they may be imposed upon, and therefore will be not inclined to real belief, whatever profession of it they may outwardly make.

FOURTHLY, the use of civil punishments against men erroneous in religion, will, naturally, tend to diminish very much, and often will

destroy the proper Christian benevolence, and, by degrees, even common humanity among men. For neither those who are punished, nor those who punish them, or are accessory to it, can well, if at all, preserve these sentiments, one towards another. For can those inquisitors in Spain or Italy, retain any truly Christian benevolence, or even common humanity towards those, whom, after having kept them for a long time, in many cases, upon mere suspicions, in dismal dungeons, they put, at length, to such exquisite tortures, that they often are near expiring under the insufferable pain? And, if even these tortures cannot prevail upon them to profess against their consciences, they are then, as being incorrigible heretics, delivered over to the secular arm. It is no excuse for this barbarous proceeding, that the inquisitors pretend to intreat the secular powers that the lives of these heretics may not be touched. What is this but hypocrisy, as visible, and as shocking as the flames, in which these miserable creatures are burnt! Is it possible that they who thus slaughter men like themselves, and think withal that they are sending them to eternal torments in hell, can have any compassion or affection towards them? They must, without question, be utterly void of all real pity and benevolence. And so indeed must they, who, by way of punishing them for heresy, keep men for their whole lives in the most rueful imprisonment, or in the deplorable slavery of the galleys. Can they have any real concern for their spiritual any more than for their temporal welfare? It is as plainly impossible to be conceived, as it is to reconcile these practices with the maxims and precepts of the Gospel, concerning the real charity and affection that men are required to bear towards each other. Whosoever, says the scripture, *doth not righteousness, is not of God, neither he that loveth not his brother* [z]. It is vain that he pretendeth a love for God, and a concern for his honour. For how can *he who loveth not his brother, whom he hath seen, love God, whom he hath not seen* [a]? *Love worketh no ill to his neighbour, therefore love is the fulfilling of the law* [b]. Or how can the poor persons, so unmercifully used, preserve an affection for such unjust and outrageous persecutors? Human nature will hardly allow it. Most plain it therefore is, that the use of

[z] 1 JOHN iii. 10.

[a] 1 JOHN iv. 20.

[b] ROM. xiii. 10.

such rigorous civil punishment for errors in religion, tends to extinguish all charity, and even humanity among men.

FIFTHLY, the use of these punishments will tend to frighten many men from staying in, or even coming into, a country, where they will be subject to them. For men of probity and piety will reasonably think the liberty of inquiring about, and openly professing their religion, and worshipping God according to it, to be things of the utmost importance, as well as the greatest satisfaction to them; and will dread exceedingly the being in a state, in which they must either be restrained from all these, or must practise them at the hazard of their fortunes, their liberties, or their lives. No outward circumstances of a country or a climate can, in any measure, balance or compensate for the want of this liberty. For of what value are fine air or fertility of soil, when they are inconsistent with any peace or ease of mind? or of what moment are opportunities of gainful commerce, when they must be attended with the final loss of one's soul? In these circumstances, no temporal advantages will engage sober and conscientious men, who make the best citizens, to come into, or stay long in, such a country: so that it will, by degrees, be drained of its people; will lose its manufactures and commerce, and will be so far impoverished and weakened, as to be hardly sufficient for its own defence against foreign enemies: or, at least, its people will grow bigoted and narrow-minded; and some of them, perhaps, from being forced to constant hypocrisy, will be apt to grow, in other respects, immoral and wicked. So that such a country is very likely to be weak and wretched in all respects. These are the natural consequences or effects of the use of temporal punishments against real or supposed errors in religion.

BUT can God approve such effects as these, which are plainly contrary to his whole intentions and proceedings, with regard to mankind? He hath graciously endowed them with a knowledge of the difference between moral good and evil, with a liberty of acting according to it, and with a sense of their obligation to use their intellectual powers to that purpose. He has made them able to discover, that, as he is a spirit, absolutely perfect in all respects, he ought to be worshipped

worshipped *in spirit and in truth* [c]. He, therefore, must certainly expect, that our religion, as it is directed towards him, should be the effect of our free choice; should be a service flowing jointly from our reason and our affection towards him; without both which it is of no value in his sight, or rather, it is quite displeasing to him: and that with regard to mankind, his children and our brethren, it should be productive of real, universal, and constant benevolence, exerted in all the good offices that are, properly speaking, in our power, especially such as tend to make them truly religious, in order to their being eternally happy. He further intended, that they should live, and be happy in civil societies, by their due submission to all the regulations in those states, as far as would be consistent with the just performance of their religious duties. Can he, then, ever approve a method, which instead of a sincere faith and virtuous practice, will seldom, if ever, produce any thing, but is covered, either with hypocrisy or ignorance, bigotry or superstition? And, instead of promoting fidelity, probity, charity, and affection towards each other, will always cause enmities and oppressions, outrages and cruelties to abound among them, will make civil societies weak and wretched, and incapable of answering the principal ends for which they were formed? Most certainly, no considerate man can imagine that a method which is naturally, and even unavoidably productive of such consequences, can be approved, or even allowed by a perfectly wise and good being. We ought, therefore, to conclude that God does not, by the law of nature, authorize or allow sovereigns to use any rigorous punishments in cases that concern religion only, and do not affect the civil state.

It will be of no moment, in opposition to this reasoning, to allege, That the sovereign, as being God's representative, is concerned to vindicate his honour, by restraining and punishing heresies that are derogatory and repugnant to it, and are so for want of due care, and of a good heart in the heretics. For, in the first place, if God thought fit to vindicate his own honour, by punishing here, on earth, the offenders against it, by forming and professing false opinions in religion, he has infinite knowledge and power so to do; and he has sometimes done it,

[c] JOHN IV. 23.

in the case of public blasphemers against him, or proud invaders of his glory, as of *Sennacherib* [d], of *Herod* [e], and others. In common life, a flash of lightning, a fever, or any other distempers might be employed by him effectually to that purpose. In short, he can do it whenever he sees fit; and he certainly will do it in the life to come. But it may be in many cases most agreeable to the methods of his providence, and of his mercy, to forbear doing it for some time, and to prolong such a person's state of trial, that there may be opportunity for his repentance and amendment. In the mean while the sovereign is not concerned to vindicate God's honour against false doctrines, because he being so liable as he is to mistakes about points controverted in religion, is not a proper person to do it. It would not be consistent with God's honour, or, in other words, it would not be agreeable to his Perfections, to suppose that he requires civil sovereigns to do it: because they may easily, in many cases, do much more harm, than good, by attempting it in the way of force and civil punishment.

THE right way that sovereigns, as well as all other men, ought to take for shewing their concern to vindicate and promote God's honour, is, themselves to have and profess a true faith, or at least sincerely endeavour to do it; to yield all possible obedience to his laws, and to employ such methods for causing the same things to be done by other men, as will really tend to produce such effects, in ways acceptable to God; and these ways will be by setting good examples, and taking proper care that their subjects may be frequently and duly instructed in points of faith, and earnestly exhorted to a suitable practice.

IF these things be done, there will be no need of using force, even for preventing heretics from seducing weak persons into their errors; which was another reason alleged for the use of it. For by such instruction, exhortation, and examples all well meaning persons, however weak, may be competently secured against the seducement of heretics, if proper care and attention be employed on their own part. Without these no methods can be truly effectual for their benefit: and with these, they may be sufficiently guarded against any ill

[d] 2 KINGS xix. 6.

[e] ACTS xii. 23.

impressions, even though they may sometimes fall into the conversation of heretics. The consideration, therefore, of their safety, is no sufficient reason for doing a thing that, on other accounts, must be improper and unjust.

NOR will sovereigns be justified, in using civil punishments against persons, erroneous in religion, by an apprehension that if these increase much in a civil state, they will draw down the temporal judgments of God upon it. Reason, indeed, makes it highly probable, that God will punish a country for the *wickedness of them that dwell therein* [f]; and as the venting and propagating errors of some kinds in religion, may be justly reckoned a wicked conduct; therefore, God may no doubt, whenever he thinks fit, punish a nation, wherein such wicked errors are very frequent, with temporal punishments; as he may for their abounding in other crimes. But we cannot from hence justly argue, that the sovereigns of those nations may, barely by their own civil authority, use punishments against those erroneous persons, if their errors be not detrimental to the civil state; because (on account of the other very ill consequences here above-mentioned, that will arise from the use of such punishments) sovereigns in general are not fit persons to inflict them, and on that account have not authority to do it. None of them therefore, can be blameable, if they do it not. It will be a sufficient discharge of their duty, if they only use the proper means in their power, of instruction, exhortation, and their own good examples to prevent or suppress such wicked errors and heresies. If it cannot be done effectually by these means, the rest must be left to the providence of God; and the people must bear the ill consequences of their conduct in this respect. The case of the particular threatnings in the Scriptures, against the Jews for rejecting the Messiah, &c. shall be considered hereafter.

UPON the whole, since we have shewn, that the use of grievous punishments by civil sovereigns against those persons, whose errors, or ill practices in religion, are not detrimental to the civil state, will, and must naturally have consequences or effects, repugnant both to the honour of God, and to the spiritual and temporal welfare of mankind,

[f] PSALM cvii. 34.

and are not needful for any good purposes; we may from thence justly conclude even from the light of natural reason only, that God will not allow the use of them, in such cases, by any sovereign whatsoever.

But it may be said, that tho' rigorous punishments may not be allowable, because of their ill effects, yet the same arguments which prove against them, will not be of force against penalties of a lower nature, *i. e.* against small mulcts in money; the loss of some civil advantages of no great moment, slight marks of dishonour, and other things of a like kind. Tho' these, indeed, may make men somewhat uneasy, and willing to be freed from them, if they well can; yet they never will have weight enough to engage them, with this view, either to profess, or to act, contrary to their consciences in matters of religion. And therefore, no great hurt will ever be done by penalties of such a nature. On the other hand, they may be sometimes of real and great use to the true religion, by putting men upon considering it with due attention. A want of such attention, occasioned by some prejudice, passion, or interest, is commonly the cause why men do not see the truth. If, therefore, they were laid under some inconveniences, from which they could at any time be freed, by duly considering matters of religion, a regard to their own interest and advantage would outweigh and get the better of such ordinary prejudices and passions; would dispose them to give proper attention, and, by that means, would occasion their seeing the truth. Or if some men should stand out against such moderate penalties, yet many others might be influenced by them; and if they should be convinced and brought over to the truth, or should only conform in outward practice to it, their children and dependents would be afterwards brought up, and sincerely rooted in it: And this would tend to produce an agreement in religion, with an uniformity of worship, among the people in the civil state, which would be a very great benefit to it, by preventing those factions and disturbances which differences in religion often produce. And therefore it may justly be presumed that God will allow such penalties to be laid by any sovereign, on the side of true religion, but of that only, upon all, who refuse to conform to it.

BUT, upon this reasoning, we may observe, first, that the use of such moderate penalties against errors in religion, will hardly ever do
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any considerable good. For, instead of engaging men to consider things impartially, in order to come at the truth; they will, on the contrary, almost always irritate them against the persons by whom it is offered to them, accompanied by these penalties, and so will at once produce a breach of charity, and even great animosity between them, and strongly indispose the sufferers to regard the arguments alledged for the truth; which, therefore, they will not come to see. And very few men will be induced by them to profess or practise what they think is not right.

If, indeed, there should be any persons who are indifferent as to religion, some of them may be gained over by a prospect of avoiding these penalties: And tho' they hardly ever will be sincere, yet their children may, by education under it, be sincerely fixed on the side of truth; which may be an advantage in some few cases. But this possible advantage, in some cases, will not be a sufficient reason to justify these penalties; because considered upon the whole, they will always do much more hurt than good. For if it be supposed that God, by the law of nature, allows them to be used by sovereigns, they will in course, be used by all sovereigns. And as there will always be many more sovereigns on the side of error than of truth, these will use them in support of what they think to be truth, tho' it really be error. Now the influence of these penalties, whatever it is, being so much oftener employed on the side of error, the sum of these influences on the behalf of the latter, will, in general, be much greater than on the side of true religion. So that much more hurt will be done to the cause of truth, than there will be good, upon the whole. And there is no real expedience in any case, of such penalties on the side of true religion, which will do better if left wholly to itself. It may, therefore, justly be concluded, that God, who foresees all the consequences of things, and has fixed the duty of mankind upon such a bottom, as will be most to their advantage upon the whole, will not allow this use even of moderate penalties in any case, in order to convert men to the true religion. The considerations that have been here offered on the side of liberty in religion, are thought, by the friends of it, to be answers sufficient to all things of moment, which the Romanists, or others have alledged from natural reason, to prove the lawfulness and expediency of using force or civil penalties, great or small,

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against errors in religion, that do not hurt the civil state. Let us now proceed to consider the arguments which they draw to the same purpose from divine revelation.

THE intolerants argue from the law of Moses: God commanded in that law, that whoever was guilty of the idolatrous worship of *the sun or moon, or any of the hosts of heaven* [g], should be stoned to death: And they suppose, that he ordained this punishment against it, because, tho' it might, in some cases, be founded on erroneous conceptions about the nature of the heavenly bodies, yet those errors must have proceeded from a corruption in mens understandings, that might have been avoided; and being greatly repugnant to the honour of God, and to the duty of men, they were, therefore, highly criminal, and justly to be punished. From this precedent set by God, of punishing idolatry, by the magistrates in the Mosaic law, the intolerants think, they may justly infer, both that God intends this crime of idolatry should be punished by the civil magistrates, in all other nations likewise; and, by a parity of reason, that all other errors in religion, and evil practices, proceeding from them that are owing to a like corruption of the understanding, should, in like manner, be every where punished by the civil magistrate.

BUT to this argument, I answer, that there is no sufficient ground to conclude from this precedent in the Mosaic law, that God intended that even idolatry itself should, in other nations, be punished by the civil magistrate: because there was, in the case of the Israelites, a reason why idolatry, when committed by them, was to be punished by the civil magistrate, which reason did not hold with regard to any other nations. For the Israelites were under a theocracy, that is, God had taken upon himself the character and authority of their civil governor; and, therefore, every act of idolatry being an act of high-treason against him, their polity could not have subsisted, unless this crime, (to which that nation was very prone) had been so punished as to prevent its being often committed. Accordingly God ordered the punishment of it to be inflicted by his vicegerent, the civil magistrate. But this particular form of government called a theocracy, never had place

[g] DEUT. xvii. 3. 5.

in any other nation: and, therefore, we cannot, from this precedent of Israel, conclude, that idolatry is, in like manner, to be punished in any other; especially, since there was no declaration made, nor any direction given, in the Mosaic law, nor in any part of divine revelation, to that purpose. The Edomites and Ammonites, who were idolaters, when they were under the dominion of Israel in the reigns of David and Solomon, were not punished on that account; which shews, that those princes thought the Mosaic law did not require the civil punishment of idolaters in other nations, as it did in that of Israel.

BUT the intolerants say, that their argument from Job is not liable to the answer we here draw from the theocracy of Israel. Job did not live under that form of government, yet he was divinely inspired; and he expressly says, that the worship of the *sun* and *moon* was an *iniquity to be punished by the judge* [h], i. e. by the civil magistrate; and to be punished, because it was a denial of, or high disrespect to God's perfections. Now from hence, say the intolerants, we certainly may argue, that since idolatry, as a criminal error in men's understanding, was then, even where there was no theocracy, to be punished by the civil magistrate, there is reason to think, that God intends that both idolatry, and all other such criminal errors in the understanding against true religion, should be, in like manner, punished by the civil magistrate in all other nations and times.

IN answer to which argument, the friends of liberty do admit, that Job did not live under a theocracy, and yet was divinely inspired; so that this text is, indeed, of as much authority as any other part of the holy Scripture. But they do not admit, that the sense, which the intolerants put upon it, is the true one. For tho', indeed, the English version represents idolatry as what was to be punished by the judge, or civil magistrate, yet there is not in the Hebrew of this passage any word that signifies punishment; that idea is deduced intirely from the word in the original פֶּלִי which does not necessarily imply it: For that it is, in several places of the Bible, used to signify an estimator or judge of the value and nature of a thing, without his being vested with any civil authority. Thus, *their rock is not as our rock, our enemies*

[h] JOB xxxi. 26, 28.

themselves being judges [i]. And thou also (says the prophet, to the city of Jerusalem) *that hast judged thy sisters*, (viz. Sodom and Samaria) *bear thine own shame for the sins that thou hast committed, &c* [k]. In both which texts the words derived from the same root, with that of Job xxxi. 28. have not the sense of any civil judicial authority, but only of judging by way of estimation, and pronouncing upon the comparison. And in this sense, the interlineary Latin translation of the Hebrew in our Polyglott, in the passage we are considering, says, *etiam hæc iniquitas judicata, si mentitus sum Deo desuper*. The version of the LXX is thus: Καὶ τὸτοῦ μοι ἂν ἀνομία ἡ μεγίστη λογισθεῖν, ὅτι ἐψεύσαμην ἐναντίον Κυρίου τοῦ ὑψίστου. The Latin vulgate is thus: *Quæ est iniquitas maxima, et negati contra Deum altissimum*. In the Targum or Chaldee paraphrase, it is thus: *Est etiam iniquitas maxima, quoniam negarem Deum desuper*.

Now this sense of the word פלילי does not imply any thing of punishment; and that this was the real sense of it, we have much more reason to conclude from the authors of these ancient versions, than from our modern translation made in the time of king James I. when the lawfulness of punishments, even capital ones, for great errors in religion, was thought to be indisputable here in England. Now if we allow this sense of the word פלילי, there is no ground at all for inferring from this text, the civil punishment of idolatry itself in other nations, any more than there was from the Mosaic law. Now if the civil punishment of idolatry itself, in other nations, besides that of Israel, cannot be proved from this text, or from the Mosaic law, much less can the punishment of all, or any other errors in religion be proved from thence.

THE intolerants have yet less ground to argue as they do, for the use of civil punishment against blameable errors in religion, from any thing, either said or done by our Saviour, or his apostles, as related in the New Testament.

FOR, in the first place, the personal character of our Saviour was quite repugnant to any thing of this kind. The ancient prophecies spake of him, as one who should not *strive nor cry, nor should his voice be heard in the streets* [m]; as one who should *not break a bruised reed,*

[i] DEUT. xxxii. 31.

[k] EZEK. xvi. 52.

[m] ISAIAH xlii. 2.

nor quench the smoking flax, but should be always meek and lowly in heart [n].

AND his conduct was answerable to these predictions. He speaks of himself as of a shepherd, who, according to the general eastern custom, would *lead, not drive, his sheep* [o]. When many of his disciples went back, *and walked no more with him* [p], he said only with mildness to his apostles, *Will ye also go away?* intimating, that they might do so if they thought fit, without fearing any punishment from him in the present world. By this parable of the Samaritan, who *had compassion* [q] on the wounded Jew, he taught, that no difference of religion, no error in it, supposed or real, ought to hinder mercy or good offices from being done to men in such errors. When his disciples requested him to allow them to command fire to come down from Heaven for the destruction of men, whom he had declared to be of an erroneous religion, and who, besides, had affronted him in person; our Lord said to his apostles, *ye know not what spirit ye are of* [r]. *When he was reviled, he reviled not again; when he suffered, he threatned not; but committed himself to God, who judgeth righteously* [s].

IN his parable of the *tares in the field among the wheat* [t], he expressed his desire that offenders by errors in religion, as well as in other respects, should be left, as far as might be consistent with the peace and safety of civil societies, until the harvest, or the end of the world, and the judgment of God himself; especially, when there should be any danger that, by punishing offenders here, many innocent persons might be involved in their punishment, and suffer undeservedly; which must often happen in the case of invisible errors in religion.

IT is true, indeed, that our saviour did, in one case, make use of a small degree of force, and inflict, what may be called, a small temporal punishment against the sellers of animals for sacrifices, and the *changers of money in the temple of Jerusalem* [u]. In doing which his design was to shew, how great a desire he had to secure a proper respect, even to the outward worship of God. For which reason he acted, as by the law of his country, he was, in quality of prophet, in such a

[n] MATT. xi. 29.

[o] JOHN x. 4.

[p] JOHN vi. 66, 67.

[q] LUKE x. 30, 33.

[r] LUKE ix. 54, 55.

[s] 1 PET. ii. 23.

[t] MATT. xiii. 30.

[u] JOHN ii. 14, 15.

case authorized to do against men, of whom some profaned the temple of God, by making it not only a *house of merchandize*, but even a *den of thieves* [x]; and others, who might be, in some respect, less criminal, yet were in a blameable error, at least, and chargeable with undue disrespect to the worship of God. But this conduct in him who was infallible, and a most perfect discerners of spirits, against men of this character, is no sufficient precedent to warrant fallible persons, even tho' they be magistrates, to use force when the interest of the civil state does not require it, against supposed errors in religion, with regard to which they may easily be mistaken.

NOR can they be justified in so doing by what our saviour said, in one of his parables, about *compelling men to come in to his religion* [y]. From this passage some intolerants have argued, that considering his religion, as it was to be in future times, supported by the civil magistrate, he meant, that they should use force to compel those persons to the profession of the Gospel, who would not be gained by gentle applications, or admonitions. But the whole turn of this parable, and the use of the word *compel* in many other places of the holy Scripture, shew, that this is a very wrong sense put upon the word *compel* in this place. That word is frequently used by the sacred writers to signify only, earnest invitation, strong argument and persuasion, from whence it is highly probable, that it was designed to bear that sense in the passage we are considering [z]. So that no just argument can be drawn from this text for the use of force against errors in religion.

NOR can that consequence be drawn from the threatnings denounced by our Saviour of temporal destruction to the Jews for their rejecting his Gospel. The case of the Jews was different, in this respect, from that of other nations. God had threatened them by his prophets, that they should suffer temporal destruction, if they should reject the Messiah; and, therefore, upon their doing it, there was a necessity that these prophecies should be fulfilled. But there are no such threatnings against any other people, in case they should reject the Messiah, and,

[x] LUKE xix. 46.

[y] LUKE xiv. 23.

[z] It is observeable that the Greek word *βία*, is used in this very sense by Plutarch in the life of Coriolanus, *ἀναγκάσει τινι τρόπῳ καὶ διὰ βίας παραινόμενα*. p. 225. Rualdi Edit.

therefore,

therefore, no argument can be drawn from the case of the Jews, to that of any other nation.

NOR does the practice of the apostles of our Saviour afford any just precedent of this kind. For after they had been enlightened by the holy Spirit, they said, that *the wrath of man worketh not the righteousness of God* [a]. They direct that men should be instructed with meekness, *if God peradventure will give them repentance to the acknowledging of the truth* [b]. They say, that *the servant of the Lord must not strive*, meaning, with any violence ἢ δὲ μάχεσθαι, *but be gentle towards all men, apt to teach and patient, and that the weapons of the warfare are not carnal* [c]. *The wisdom that is from above is first pure, then peaceable, gentle, and easy to be intreated, full of mercy and good fruits, without partiality, and without hypocrisy. They speak, indeed, of contending for the faith which was once delivered to the saints* [d]: But they mean either the suffering for it, which the sense of the word ἐπαγωνίζεσθαι may bear (see bishop Hoadley's sermon on this text) or, at least, such a contention as that of the patriarch Jacob with the angel, which was by weeping and humble supplication, *he had power over the angel and prevailed, he wept and made supplication unto him* [e].

OUR Lord, indeed, thought fit that, in some few particular cases, temporal punishments should be inflicted on certain persons, who were heinous offenders against his religion, that they might be made examples to others, and raise a proper awe and respect towards the apostles, as governors of the church, and under the influence of the holy Spirit. For this purpose (as has been observed above) immediate death was brought at the word of the apostle Peter upon Ananias, and Sapphira his wife, for their deliberate fraud and designed imposition upon the holy Ghost. Blindness fell upon Elymas, according to the threatening of St. Paul [f], for wickedly endeavouring to hinder the conversion of Sergius, the pro-consul, to the faith of the Gospel. And, probably, some bodily distempers were inflicted by the same apostle upon Hymenæus and Alexander, for blaspheming. Though the theocracy then no longer subsisted, yet God thought fit that some particular of-

[a] JAM. i. 20. [b] 2 TIM. ii. 24, 25. [c] 2 COR. x. 4. [d] JUD. 3. [e] HOSEA xii. 4.
[f] ACTS xiii. 8.

fences committed against religion only, should be punished with temporal punishments. And this he hath no doubt a right in all cases to do, whenever he is pleased to give the persons, whom he employs as his agents in this way, miraculous powers, as proofs of their divine commission.

BUT the intolerants have no just ground to argue from hence, that either the present clergy, or the civil magistrate, have, without such a divine commission, authority to use civil punishments in such cases.

FIRST, because those punishments were then, properly speaking, inflicted by God himself, and not by the apostles, as St. Hierom observes. Perhaps they might do nothing more than foretell them.

SECONDLY, if they had any active part in causing them, yet they were inspired and infallible persons, immediately commissioned by God: and therefore they are not just precedents to civil magistrates, or any other persons who are not so divinely inspired and commissioned, for using punishments of a civil nature in such cases.

As to the authority given to civil magistrates, to punish with *the sword evil-doers* [g]; and the argument from thence, that *heresies* (being reckoned by St. Paul [h] among other evil actions &c.) may, therefore, be justly punished with civil punishments; it is, indeed, to be allowed, that the Scriptures do speak of heresies, as being works of the flesh, &c. representing them to be, for the most part, not barely unavoidable, or innocent, errors in the understanding, but faults of the will, occasioning the corruption in the understanding. Indeed, at that time, no heresy, or great errors in the understanding about any of the chief articles of religion, could well be innocent, because they, who had embraced the Gospel, must have known [i] that the apostles were divinely inspired, and might also easily know what their doctrine was; and, therefore, if they wilfully contradicted and opposed it, they must have been influenced by some bad, immoral motives so to do. Diotrophes was plainly so influenced. Such men must, therefore, have been self-condemned. So that the Scripture might justly consider heresies of this kind as evil works. But it does not say, that those heresies, and

[g] ROM. xiii. 4. [h] GALAT. v. 20. [i] ROM. xvi. 17, 18. *Mark them, who cause divisions and offences contrary to the doctrine which ye have learned, and avoid them.*

much less, that all heresies in general, or all variances from the doctrine of the church, are such evil works as are to be punished by the civil magistrate. This inference cannot be justly made, unless it be supposed that all evil works, without exception, are to be punished by the civil magistrate. But this supposition would not be warrantable by reason, which, as I have shewn, directs the magistrate to punish those evil works only that are hurtful to the civil state, leaving the rest to be punished by God. And, therefore, if some heresies be not hurtful to the civil state, though they may be evil in themselves, reason does not require them to be punished by the civil magistrate: and in cases of this nature, reason ought to be consulted for interpreting and limiting the general expressions of the holy Scripture.

As to the general practice in the Christian church from the time of Constantine the Great, of adding civil penalties, as imprisonment, or banishment, to those of spiritual excommunication; the friends of liberty readily own, that this latter punishment is justly founded, not only upon the command of our Saviour, but even upon the reason of things as being generally useful, and even sometimes necessary to preserve the purity, credit, order, and peace of such a society as the church of Christ. And, therefore, the governors of it in every age are authorized to exercise, in a proper way, this method of discipline. They may, if there be reason, suspend and eject any irregular members, or those who believe amiss, from the outward communion of the church. But they ought to be very cautious how they excommunicate men of characters, otherwise good; because they differ from themselves in speculative opinions, which are not either mentioned in the Scripture, or not represented as fundamental. Christians should bear with each other in a spirit of charity as to such points. It does not, however, from hence follow, that excommunication may justly be enforced, with any civil penalties added to it. It is plain, that our Saviour did not direct any thing of that kind to be done. He rather intimated the contrary, by saying, that *his kingdom was not of this world* [k]. And his apostles seem to have disclaimed the use of such punishments, by saying, that the weapons of their warfare were not carnal [l].

[k] JOHN xviii. 36.

[l] 2 COR. x. 4.

AND as to the practice in later times of the church, of sovereigns having added civil penalties to spiritual ones, at the request of bishops; the friends of liberty, who do not allow any infallible authority in the church since the time of the apostles, cannot suffer themselves to be governed, or much swayed by the common practice either of bishops, or of civil sovereigns, in judging of the lawfulness of employing civil penalties against errors in religion. They think it sufficiently plain, both from reason and the Scripture, that such penalties ought not to be used, with a view to bring men off from any errors that are not detrimental to the civil state, or to punish them for holding them. Such errors are to be left to the judgment of God: and they are of opinion with one of the ecclesiastical historians, that it is a kind of persecution, to punish in this manner those that are quiet.

THUS I have represented the principal arguments that have been employed against and for allowing a toleration, or liberty of publicly worshipping God, to persons erroneous in their religion; and I have done it the more largely, that you may be able to form a right judgment of a question, that hath been so much contested, and is so even at present: however, I beg leave to add, that, before you settle your judgment in this respect, it may be adviseable for you to consider how this matter stands in the laws of this realm, of which you are a subject. Some account of these laws, of the times when, and the occasions upon which they were made, will be given in the VIIth Tract, which is the last that is concerning ecclesiastical affairs. If indeed, upon this representation, you should find that any parts of these laws are not possibly to be reconciled, with what you judge to be reason and truth, one cannot desire that you should entirely give up your judgment, finally and absolutely to their authority. For, very certain it is, that no laws, merely human, can pretend to be infallible, or exempt from all error. They are sometimes the effects of prejudices and passions, that are general in some nations at particular ages.

YET, as they are for the most part made, especially in free nations, by persons of rank, and supposed to be endowed with distinguished wisdom and experience in affairs, we ought to presume, unless the contrary should plainly appear, that they have been able as well as careful to form the laws agreeably to truth, as well as to the real and
 permanent

permanent interest of the community, which should be at all times founded in truth. Upon this presumption it will always be right, and the duty of each private subject, to be very cautious how he declares, or even determines with himself, against the truth or reasonableness of any laws that are actually in force in his country. He ought to consider again and again the truth of the principles upon which he goes, and the justness of the inferences he makes in opposition to these laws, and ought to consult, if he has opportunity, with persons of known abilities and judgment concerning them.

BUT if, after all the care he can take, he is as sure as as he can well be, in cases of this nature, that those laws are wrong, and have very bad consequences while they continue, he, no doubt, ought to forbear acting under them, and ought to use his endeavours, according to his station, in a legal and quiet way, to obtain their repeal, or the alterations that are necessary in them.

TRACT III.

On the Liberty as to Matters Ecclesiastical, when a Religion is publicly established.

THE wisest men in all civilized nations have agreed, that, in order to preserve the public welfare and peace, a constant fear of God ought to be kept up in the hearts of the generality of the subjects; and that such a fear of God cannot be sufficiently preserved, without a public worship of him, with some instruction accompanying, and suited to it about matters of religion. The chief question is, by what means, or in what manner, this public worship and instruction ought to be provided for, and maintained. There are two different methods of doing these things.

ONE is, that it should be provided, by the civil sovereign, in concert with the governors and people of the church, when such a one there be duly qualified for that purpose, consisting of the generality of his subjects, whom he judges proper to be taken under his care and protection, and that, in consequence of his provision, he should have some influence and authority in things ecclesiastical. The ground and extent of this authority will hereafter be considered. At present it may be sufficient to observe, that it should be such only as will be consistent with the liberty that is necessary in matters of religion. Such an authoritative provision, made by a sovereign in the respects abovementioned, is called a public establishment of a religion. The other method of supporting a public worship, is by the common, but private, agreement and contributions of the people of each sect in religion; or, when there are several such in a nation, of each congregation of them, to appoint for themselves the places, the times, and other circumstances of their public worship, and to maintain the ministers of it, without any authority or intervention of the sovereign, farther than by his civil power to allow and preserve this liberty to them.

WHICH of these two methods is most for the interest of a civil state, and at the same time most likely to secure and promote a constant and regular practice of true religion, we are now to consider.

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THE former of these methods hath been generally practised in all ages, and if it be well managed on the part of the sovereign, may, no doubt, be effectual for the purposes in view. This will appear by considering the things chiefly requisite in order to a regular public worship. They are, proper places and times for it, a due attendance of the people at it, a form of service plain and solemn, a decent conduct of the clergy who officiate in it, and a security against all insults and disturbances from other religionists. Now as to all these, a proper application of the sovereign's authority may be of great service. For, first, as to the places for public worship, the sovereign being able, at least by purchase or exchange, to obtain any places in his dominions, may accordingly fix upon those places in all the several districts that may be nearest and most convenient for the generality of the people to resort to, without much fatigue, and so may dispose them to come thither more willingly.

HE may farther take care that the buildings in those places may be sufficiently large and fit for the reception of the people, and their due accommodation in their public worship. And if it be proper that any of those buildings should be of more grandeur than ordinary for the honour of God and of the nation, he can best bear the expence of erecting them. In the Jewish state we find, that God not only allowed, but ordered a most sumptuous and magnificent temple to be built for the whole nation to resort to, and from thence to form more exalted and respectful ideas of him and of his worship, and at the same time to remind them that they had all the same spiritual relation to him and to each other. With the like view, all Christian nations have thought it proper to have one great church in every diocese, as a symbol of the spiritual union of all the Christians belonging to it, and of their obligation to meet all together, if it could be done with convenience, for God's public worship; at least in the capital city of each nation there may be a special propriety for one magnificent sacred building. For as the public solemnities of religion are sometimes to be celebrated in the presence of the sovereign, and of the chief persons of the nation, it may be requisite, for the honour of him and of it, that there be a building proper to receive him and them on such occasions; and buildings of this sort cannot be well erected, but at the public expence.

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And in general the sovereign's authority may be requisite, that the edifices for public worship in all parts of the realm may be fit for that sacred purpose, and kept in due order and condition for it. Because if they be very meanly built, or suffered to go out of repair, or be not kept in a neat manner, as may sometimes be the case when a superior authority does not interpose, these ill circumstances will be apt to raise in the people who come into them, mean ideas of the worship of God, which cannot but be followed with ill effects.

THE times for religious worship, when any are acknowledged to have been appointed by divine revelation, ought, no doubt, to be observed accordingly, both by the sovereign and by his people. But besides these fixed and returning times, there may be, on some extraordinary occasions, a necessity of national humiliation for their sins against God, or for their public thanksgiving for eminent mercies received from him; and these may be very properly fixed upon by the sovereign, who will always be the best judge of what concerns the necessities or advantages of the public. There may indeed be some of the subjects who may scruple, or profess to scruple, either the appointment of any such days at all, or his right of appointing them; and, on those accounts, may refuse to conform to the observance of them. And there may be some others, who though not moved by scruples, yet may be so much attached to worldly business or diversions, that they will not be inclined to attend public worship on those days so appointed. Now one must allow that the sovereign cannot justly or effectually use force or compulsion against either of those kinds of men. For as the former profess to think such occasional days of public worship unlawful to be appointed by the sovereign, he cannot, with reason, force them to act against their consciences. And though the latter, indeed, may not at first profess, or have scruples, yet they might pretend such, if the sovereign was to attempt to compel them to public worship, and as he could not know whether these scruples were real or not, he must have a due regard to them. But upon this latter kind of men, the sovereign may, in some degree, have influence by hindering all kinds of worldly business or work, all proceedings at law, and all kinds of public diversions from being carried on upon those sacred days. This the sovereign may certainly do, and with reason, at any time, when it is really for the public

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lic service, if this prohibition of them does not last too long. And when there are none of the things going on, by which worldly-minded or pleasurable men would be kept from resorting to the public worship, they may be more easily disposed to attend it.

BUT the most effectual way the sovereign can take to work upon his subjects to this purpose, is by his own example, and those of the chief persons about him. The examples of sovereigns have been, in all ages, found to be of very great influence, as to this point. Livy observes that Tullus Hostilius [m] falling sick grew superstitious, and his subjects degenerated into the same weakness; the people hardly ever failing to imitate their princes in this way. He had, indeed, before, observed a remarkable instance of it in Numa, who, by his own personal character and application in this respect, turned the whole Roman nation to an extraordinary regard to matters of religion, and even had the like influence upon some of their neighbours [n]. In the history of the Jews, it is very observable, that the great body of that people, either went into idolatrous worship, or adhered to the true religion, according as their several kings set them examples.

AND to come down to more modern times, the kings of this our nation, in the ages before the Norman conquest and after it, were in general the chief causes that religion or superstition, attachment or disregard, to the see of Rome, prevailed generally among their people. If therefore a prince, who is in other respects esteemed and beloved by his subjects, is assiduous, and to all appearance in earnest, when he gives them his own example in attending the public worship of God, he will hardly ever fail to have a powerful influence to this purpose.

YET farther, as he provides the maintenance for those that preside and officiate in matters of religion, and gives them the rank, dignity, and respect they have in the civil state; he can influence and oblige them to a right discharge of their sacred duty. He may, in great measure, prevent errors from spreading among them. How far he may

[m] Tunc adeo fracti simul cum corpore spiritus illi feroces, ut repente omnibus magnis parvisque superstitionibus obnoxius degeret, religionibusque etiam populum impleret. Livy Hist. Lib. I. 23.

[n] Quum ipsi se homines in regis, velut unici exempli, mores formarent tum finitimi etiam populi—in eam verecundiam adducti sunt, ut civitatem, totam in cultum versam Deorum, violare ducerent nefas. Livy Hist. Lib. I. 21.

himself have a right to nominate and appoint clergymen, shall hereafter be considered. But, no doubt, he may employ his authority and countenance with great effect, for promoting among those who, at any time, are already in the church, the virtues suitable to their sacred profession. And by giving preferment and countenance to clergymen of candour, peaceableness, and moderation, he may cause those dispositions to increase and grow common among them, as he may likewise promote the growth of all kinds of other virtue and piety, of true knowledge and learning. On the other hand, if they offend in any point of morality or religion, he can, by his influence, suspend them from the performance, or at least from the benefit of their offices, till they be reformed; or, if that be not done, he may remove, or cause them to be removed from their offices. He must have the power to do this from his assigning their maintenance: and I will hereafter shew upon what foot he will also have a right to do it.

He cannot, indeed, justly hinder them from officiating as sacred ministers, to any unestablished congregation that will employ them in that character. But he can eject and keep them always out of his establishment, and so may contribute greatly to preserve peace, order, and loyalty in it, and consequently in the civil state.

In the last place, the sovereign can provide schools and universities, for the education of the national youth with principles and dispositions agreeable to the nature of his establishment, which will contribute greatly to the efficacy and the continuance of it. There can hardly be any insensible of the power and efficacy of education, towards forming and settling lasting impressions in the minds of men. The principles and notions instilled into the minds of young persons, are very apt to remain, and are exceedingly difficult to be altered afterwards. It is therefore very desirable for a sovereign who makes an establishment of religion, to provide places of instruction, where the national youth may be early imbued with principles and ways of thinking, suited to the established religion. This will contribute greatly to the safety and quiet of it.

One cannot, indeed, say, that the sovereign hath a right to order, that all the national youth should be educated thus under his public instructors: for some parents may be against this method, as disliking the established religion itself. And if this be the case, the sovereign doth

doth not seem to have a right to take the education of their children from them, and transfer it to others: for God, in the natural order of his providence, seems to have designed that the care of providing for the wants, &c. of their children, during their nonage, should belong to their parents. And if they have a natural right, as well as concern of this work, it may seem very hard, if not unjust, for a sovereign to deprive them of it, and cause their children to be educated in a way which they, their natural guardians, think to be false and wrong.

BUT the sovereign may certainly (and it is greatly his interest, by founding and supporting many places of liberal and learned education) draw and engage as many of his subjects as he is able to send their children thither for a regular education, &c.

I AM sensible that objections may possibly be made to some circumstances of the conduct here supposed in the sovereign; and these objections shall hereafter be considered. In the mean time, it is proper to give some account of the other method of private contributions, which is opposed to this, and is now to be compared with it.

THE friends of that method alledge, that from experience or history, we find that it will always be sufficient, without any civil establishment, to keep up the public worship of God according to the Gospel of Jesus Christ. For this was done anciently among the primitive Christians; and in later times by the Greek and Armenian churches, in the Turkish and Persian dominions; and by the Papists and the dissenting Protestants, in our own and other countries.

THEY also contend that this latter method is best formed to preserve a full liberty in religion. For the civil power, in this case, has no right to interpose, or at all break in upon them, supposing they neither profess nor do any thing detrimental to the civil state. And as every Christian has a right to exercise his private judgment in all matters of religion, and to act according to it; therefore nothing can be done in their churches or congregations, but by the consent and act of the majority, which is supposed to include that of each individual. They, in this way, can settle the articles of faith that are to be held and taught among them; they can appoint the times and places, and other circumstances of their public worship; they can nominate and constitute the ministers who are to officiate in it; and in case of any

mismanagement on their part, or dislike on their own, they can remove them again, as they also can censure, or, if there be need, can eject any member of their congregation who is disorderly or turbulent, without being forced to have recourse to the dilatory and expensive, and often partial proceedings of public spiritual courts. As therefore this method is fully sufficient for keeping up constantly the public worship of God, so it is the most effectual way for keeping it up in its purity, and in a manner most favourable to Christian liberty. Now here it must be allowed that by this method, a public worship, and a sense of religion, have been kept up among numbers of Christians in all ages without any public establishment. But in the instances that have been given of it, these two circumstances are to be observed.

FIRST, that the primitive Christians had so very strong convictions of the truth of their religion, that they cheerfully suffered even martyrdom for it: and it therefore was no wonder if, in this disposition, they did all that was necessary to keep up a constant social or public worship, which they knew to be their indispensable duty even in times of persecution.

THE second circumstance is, that the Greeks, the Armenians, and all other Christians in later times, though probably they have not so strong a faith in their religion as the primitive Christians, yet have been educated and long habituated to the profession of it; and besides, they all have lived under a public establishment of some other religion different from their own, which hath given them an example of public worship, and an emulation with regard to it, which are motives of great force. The true question therefore is, “whether, supposing there were
 “to be no public establishment any where, and if at the same time
 “all religionists were to have every where an equal freedom to profess
 “and practise all their several religions not detrimental to the civil
 “state, would the public worship of God be in that case as well maintained, in all countries, by this way of only private associations, regulations, and contributions, as it hath been by civil establishments
 “for that purpose?” You will judge perhaps better about this question, if you reflect that most, if not all civilized nations have been, and will be, composed chiefly of two sorts of men. First, of those who live dispersed in country villages; and secondly, of those who dwell
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more collectedly in towns and cities. With regard to those of the first sort, can it justly be supposed, that if there were no public establishment, the generality of the lower people, who by their labour can hardly earn a sufficient subsistence for themselves and their families, would be voluntarily disposed to part with any considerable portion of their gains to support the public worship and the ministers of religion? These men would not be able to contribute sufficiently; especially when they should happen to differ, as they probably might, among themselves, about their notions of religion; so that, in the same civil district, there might be religionists of various sects. The burthen of supporting the public worship would be too heavy in such cases for such people.

AND would the gentlemen proprietors of lands be always willing to take it upon themselves? would they be willing to take a share of this burthen proportionable to their larger estates, when they should be under no legal obligation to do it? would all, or the generality of these gentlemen in the several villages of the nation be willing to give up a constant tenth, or even a less part of the product of their lands to that purpose; especially, when they might differ in their notions of religion, from the greater part of their tenants, and the other lower inhabitants, who might be wrought upon by preachers to their own taste? And, what is more to be considered, would the gentlemen be willing to pay their gratuitous contributions in times and countries, where, by the prevalence of luxury and with bad œconomy, their estates would be often so much incumbered, that they might not be able themselves to live according to their rank? would they straiten themselves in secular matters to be able to contribute in ecclesiastical? more especially, would they be disposed to do it in times, when irreligion, and an unconcern for things sacred, should prevail generally among people of figure?

IT may not be easy to determine this matter from experience; because in almost all times and places there have been civil establishments of religion. However, some facts there are, which may help us to judge about this point. In divers parts of the American plantations belonging to Great Britain, there have been large tracts of inhabited lands, in which, for want of a public establishment for divine worship, many of the people have been for no small time without any
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administration of God's word and sacraments, and seemed to be abandoned to Atheism and Infidelity (see Charter for Prop. Gosp.) "Some, says bishop Drummond, in his sermon before that society—have not had a minister within a hundred miles of them. Men of fifty years of age have never seen any, nor been at any place of religious worship." Cotten Mather, in his history of New England, says, "Not one of the towns that are utterly broken up, had any minister in it for a long time. It is horrible to tell what ignorance of Christ they were thereby sunk into. Some young men, twenty years old, had never so much as once heard the name of Christ. Who so is wise, and will observe these things, cannot but wish that the folly of erecting plantations, without the worship of the Lord Jesus Christ, may be no more committed amongst us." The author of the Tour through Great Britain, vol. iv. p. 216, 273, says, "That in a large tract in the highlands of Scotland, the parishes are of so great an extent, that most of the inhabitants being destitute of all means of religious knowledge, and without any schools to educate their children, are entirely ignorant of the principles of religion."

AND *ibid.* p. 271. That in the isles of Lewis and Harries, and others belonging to them, were formerly 2 churches: but in process of time the churches there are become ruinous, and without any ministers at all. And even here in England, when, in the time between 1645 and 1660, the public establishment of religion, though not quite subverted, yet from the encouragement, by Cromwell and his party, to all Sectaries and Enthusiasts, was rendered almost ineffectual, we see what were the consequences, from a petition then presented to parliament in Rushworth's collections.

FROM these instances, and from what may be observed by ourselves of the general disposition of mankind, we may see how unlikely it is, that if the maintenance of the public worship was to depend only on the care and contributions of the farmers and their landlords in the country, without any public establishment, that it should be properly kept up there; the people in the country villages would grow irreligious, ignorant, corrupt, and, at length, almost savage.

IN cities and towns, indeed, people are more numerous and more wealthy, have better education, and converse more frequently together.

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On which accounts, men, who agree in their notions of religion, would be more likely to concert measures together, and to raise contributions for maintaining public worship, in congregations of their own sect, even if there was no public establishment. And these contributions and attendances on public worship might be generally continued some length of time, especially by those who before had been habituated to public worship under an establishment.

BUT, in process of time, there would probably be great difference of judgments among these contributors, in regard to the constitution and management of the several churches, which would either at first be formed, in great measure, independent of each other, or in time would become so. For when the civil government should not interpose, there would be no sufficient band or mean to preserve any lasting regular connexion or union among them. Discords and contentions would soon arise and increase; as to the doctrines to be taught; the forms of worship to be practised; the discipline to be exercised; and the ministers of religion who should be appointed. Might not those who should think that a sufficient regard was not paid to their judgments, to their dignity, their rank, or their wealth, in such points, grow cool and disgusted? Might they not be apt to withdraw their contributions? Or might not even the mere increase of luxury, and a decay in the spirit of religion, make many of these persons weary of contributing? Might not the public worship, on these and other accounts, come in several towns, at length, to be interrupted, and in great measure to fail?

It would, very probably, decay or fail in many places, unless the generality of the people should have a great deal of faith and of zeal for their several religions; such as Bede informs us there was among our Saxon ancestors; such as there hath been at some other times, and such as may perhaps be again among us. For indifference as to religion and warmth of zeal for it, are apt at some times to succeed to each other.

AND, in times of zeal, the officiating ministers of any sects of Christians will generally have a great influence upon each of them. And then, indeed, public worship in the several sects would be sufficiently maintained.

BUT

BUT this effect would probably be attended with other consequences very bad. Such zeal would much heighten the discord, animosity, and opposition, that will naturally and almost always subsist between different sects of religion, when the people of each are firmly attached to, and zealous for, their several sects: and from hence, different parties and factions would be formed in the civil state. There would be rivalships and fierce contentions for a superiority of temporal power, wealth, and interest. Each of these parties would find proper persons to head them; and, at fit conjunctures, those divisions would produce feuds, commotions, and civil wars. For nothing gives such an acrimony to men's spirits, as differences about religion, when they are on each side fully persuaded of, and zealous for, the truth of them. Among the Heathens, indeed, their differences as to their several religions and the worship of their different deities had seldom such effects. For very few of the Heathens appear to have had much concern about the truth of their religion, or any just notions of their Gods. They thought themselves at liberty to worship any, or all deities that came in their way.

BUT Christianity has put things upon a different foot. It lays a great stress upon true faith as necessary to eternal salvation; and it requires men to *contend earnestly for this faith* [o]. Now these dispositions, in minds not sufficiently tempered with charity and other right sentiments, which will generally be the case of a great part of mankind, will be apt to produce strong contentions, discords, oppositions, &c. especially, when there is a prospect of each party's forming, by the means of its religion, an interest in the civil state superior to the other, and by consequence of obtaining more wealth and power.

THAT these are not mere speculations only, we may plainly see, from the whole history of the Christian world: from the contests, factions, commotions, and even revolutions, attended with much disorder and bloodshed, that were carried on in the eastern empire, about the controversy of the Trinity, between the followers of Athanasius, and those of Arius: between those who received the council of Chal-

cedon, and the Nestorians and Eutychians who opposed it: between those who were for, and those who were against, the use of images in the Christian worship. Upon each of these controversies, there were very great disturbances and commotions, and much blood was at many times shed, not without revolutions, sometimes, in the civil government.

AND the like discords, disturbances, slaughters, and revolutions have been produced in these western parts of the world since the reformation of religion, by the controversies between the Romanists and Protestants: particularly in Germany, in France, in the Netherlands, and in Ireland, there was much bloodshed and devastation, In Sweden, and in Great Britain indeed, where the Protestants were most numerous and powerful, there was less blood spilt; for the Protestant religion, even when it has had the temporal power on its side, has never been much disposed to imitate the Romish cruelty. But even the Protestant religion has occasioned the depositions of several Popish princes, who have chosen rather to abdicate their thrones than their religion.

IN such a manner have things gone between Papists and Protestants, when mixed together, and both of them numerous and powerful in the same nations.

AND if between Protestants of different opinions, in the same country, there have not been quite so pernicious discords, yet they sometimes have arisen to very great heights, and perhaps, if it had not been for fear of the Papists, they had gone to greater. In the United Provinces, about the beginning of the seventeenth century, the discords between the Gomarists and Arminians in Holland, about the five controverted articles, were near upon breaking out into a civil war [p]. And every one knows what exceedingly bad consequences there were of the differences between the Presbyterians and Episcopalians in Scotland, and afterwards in England during the reigns of Charles I, II. and after the Revolution in 1688.

[p] See Bunith's Batav. illust. p. 190. Life of Grotius by Burigny, and the pieces in defence of the States, in Grotius's fourth vol. of his works.

THE like discords, &c. and their ill consequences upon the civil state, were found about two centuries ago in Æthiopia, between the Christians of the Alexandrian party, and those of the church of Rome, when the latter were introduced and supported there by one or two kings of that country (See Geddes, Baratti, &c.) Nor have there been less ill effects produced in Persia, between the different sects of Mohammedans; of whom one party are attached to Omar and Abubekir, and the other to Ali (See Hanway's Travels).

FROM all this history of what has been, we may fairly conclude what may be, that as human nature will be much the same in all ages and countries, divisions about religion, especially among christians, when great numbers of them are on each side, will frequently produce violent divisions and disturbances, perhaps civil wars in the nations where they happen to be.

SOME persons have thought, that these disturbances and other ill effects were owing to the want of care, and of good management and temper, in the several princes and governments in those countries. If an equal and impartial conduct had been held between the several disputing sects, and none of them had been favoured and supported in preference to the others, the broils and quarrels between them could never have risen to so great a height. And consequently the true and most effectual way of preventing any such ill effects to a civil state is, for sovereigns to give no kind of encouragement or preference to any one sect above another, but to protect and favour all alike, whatever their tenets are, when none of them are detrimental to the civil state.

BUT this method is no better than a mere speculation, which supposes that sovereigns and their ministers are, and will always be, different from other men, or that they have no concern for any sort of religion. Whereas this never was, nor ever will be, at least for the generality, the real fact. Sovereigns themselves will often have their likings and attachments, with reason or without, to one sect of religionists rather than another, and will give to those they like superior favour and advantages. Or if they should be quite neutral, yet, in free countries, their ministers or other principal persons may not. These may, underhand, go against the master's inclinations; or whatever their own dispositions may be, yet ambitious men, such as the

prince of Conde and duke of Guise in France, and the earl of Leiceſter, &c. in England, will often make uſe of theſe religious differences and parties to ſupport them in attaining their ends of arriving to honour, power, and wealth in the civil ſtate. Now whenever ſuch leading men in a ſtate ſupport and favour any party of religioniſts, that party will increaſe. And in a free nation, civil oppoſite intereſts and parties will always endeavour to avail themſelves of the different parties of religioniſts, and accordingly will endeavour to increaſe and confirm their ſtrength. This was the caſe with the Proteſtants in France, with the Gomariſts and Arminians in Holland, with the Preſbyterians in Scotland and New England, &c. with them, and the Independents here, between the year 1645 and 1660 [q]. It ſeems therefore to be plain, that no nation, eſpecially no free one, where there are different ſects of religioniſts nearly equal to each other in numbers and ſtrength, can expect to be, for any long time, quiet upon this ſcheme. There will, by it, be a perpetual ſeed-plot for factions and commotions.

THE moſt effectual way to prevent ſuch factions and commotions from being produced by diviſions in religion, is to make, or keep up, in proper vigour, a civil eſtabliſhment of the true religion: becauſe, by that means, a much greater number of the people, will, in length of time, be generally or always gained over to it; provided the eſtabliſhment be well made and managed. For the regularity, ſolemnity, and conſtancy of the ſacred miniſtrations, the numbers of the eſtabliſhed clergy, with the union preſerved among them, the public provision made for their maintenance, with the countenance, favours, and examples of the ſovereign, and other principal perſons, will ſeldom fail of having in ſome length of time this effect upon the people; who are generally diſpoſed to follow the ſentiments and conduct of perſons of rank, eſpecially when well exerted in ſupport of the truth in religion.

AND the people, by agreeing in their way of thinking concerning religion, and practiſing the ſame public worſhip, will come to have a mutual affection, attachment, and concern for the intereſts of each

[q] Cromwell, indeed, who was a man of great perſonal abilities, and had a large body of troops attached to his perſon, might, and did, balance the ſeveral religious parties, and kept them tolerably quiet for ſome time. But even he would have found it impracticable to have done the ſame much longer. And very ſoon after his death, the contentions between thoſe parties broke out again, with ſo much violence as produced the Reſtoration in 1660.

other. We see this effect produced in some degree among all sorts and professions of men.

ON the same account the people will be more heartily attached to their sovereign, whom, for his adherence to what they think the true religion, they will themselves approve and respect; and will also suppose him likely to be favoured by heaven in his undertakings. This attachment and affection towards him, they will be continually taught by the clergy, who being dependent upon him, will in general endeavour to promote loyalty and affection towards him among his subjects [q]; and at the same time will preserve a due respect to the nobility and gentry (which latter, indeed, is one great end of an establishment) especially in free and trading countries; where it is otherwise apt to sink by degrees among those, who, getting their wealth by their own industry, are likely to assume a spirit of independence and disregard to their superiors: so that the advantages resulting from an established clergy, are, in all these cases, of very great importance. In countries under absolute government, ecclesiastical establishments may be somewhat less necessary for this purpose, and for that of preventing the growth and ill consequences of parties and factions in religion. But in free governments it will be much more difficult for princes to hinder or put a stop to such disorders arising from combinations of religionists; and, therefore, in such cases, establishments of religion must be more expedient, or even necessary.

Now when a large majority of the people is thus attached to their prince and his nobles, and well affected to each other, by so strong a band as that of the same religion, there will be the less danger of contests or commotions between them, and other religionists, upon that subject: because those who differ from the established religion, though they may not be satisfied with their own condition as to the civil state, yet as being themselves much inferior in power, they will not have any prospect of prevailing against it, and therefore will acquiesce without making any disturbance, or efforts towards it.

It is true, there have been frequent and great disturbances on account of religion, in some countries where there have been at the

[q] The reason why this has been often otherwise in divers Christian countries, hath been that the clergy were then more dependent upon the pope, than upon their own sovereigns.

same time public establishments of it. But these disturbances have happened, because the establishment has either not been of the true religion, or it has not been well managed. The sovereign has sometimes acted oppressively against the unestablished religionists. Sometimes, on the contrary, he has unduly encouraged and supported them against the established clergy and people. At other times, he has injudiciously favoured the established clergy, and raised a spirit of bigotry, partiality, and persecution among them: he has connived at their neglect of duty, and preferred men of bad or contemptible characters! Sometimes the nobility and gentry have from a disbelief, or disregard of religion at their hearts, appeared openly to slight and discountenance the practice of it; have not attended at the public worship; have thrown all the contempt they could on the established ministers of it! These and other such circumstances may, indeed, defeat in great measure, the good effects of an established religion. But if there be a reasonable and prudent conduct in the sovereign and his ministry, and by their influence in the established clergy, it is visible from the nature and general dispositions of mankind, that a public establishment of the true religion must always have a great chance for being successful, in preventing civil disturbances from being made about religion, and in causing and preserving an attachment of the people to their sovereign, and to each other. Whereas on the contrary, if there be only private associations for keeping up the public worship of God, these will not in many cases be sufficient to do it effectually; and when they do, they will generally tend to breed disunion and animosity, opposition and contests for superiority among the different parties or sects of the people; and they often will not be sufficient to maintain the ground of true religion against its adversaries foreign and domestic, and they will inspire a disaffection, or coolness, at least, in numbers of the people towards their sovereign, who differs from them in religion; so that, upon the whole, it seems to be clear, that the making and maintaining an establishment of the true religion in a proper manner, is much for the good order, peace, and welfare of civil society; and from thence, the conclusion drawn by the friends of such establishments, is, "That the sovereign has always a right, and whenever

“ever he can, morally speaking, is under an obligation, to make and maintain such an establishment.”

BUT against the lawfulness of making such an establishment by a sovereign it hath been objected,

FIRST, that in consequence of making such establishments, false religions will always be established in many more countries than the true one; because every sovereign will establish that religion which he judges to be the true one: and there will always be many more sovereigns in error than of the true religion, and, therefore, many more false religions will be established than true [r]: and as the natural tendency of establishments is to promote and spread the established religions, much more among the people than they would otherwise be; this consequence God cannot be supposed to approve, and therefore cannot approve the making any establishments.

Now in answering this objection we must, indeed, acknowledge it to be probable, that, in the present state of mankind, the much greater number of sovereigns will always be, as, by their own fault they have always been, erroneous as to religion. And that if they be allowed to make establishments, each will make one of his own religion; from whence the consequence will be, that establishments of erroneous religions will be much the more numerous.

BUT from hence it is no just consequence that God will not allow any establishment of the true religion to be made. For when such a one is duly made, and accompanied with a full toleration, or indulgence of all other religions, not detrimental to the civil state, such an establishment will naturally do a great deal of good; and will not (except by the fault of the persons concerned) do any hurt, or at least such a one will do much more good than hurt. It is therefore very suitable to the divine perfections, to allow establishments, when thus made; though in other cases, establishments of a different kind may do hurt by the fault of men. The abuse which some or many men may make, by their own fault, of a thing, in itself lawful, expedient, and even, morally speaking, necessary for the public good, ought not to hinder

[r] See Bp. Hoadley's Answ. to Convoc. p. 128, 146, and p. 150, 167, and 131, 135: And Rights of Subjects, &c. 259, 273.

other men from the benefit of it, who will use it aright. For instance, though the liberty which all sovereigns have of making war upon just occasions, is, by many of them frequently used very ill, yet this abuse on their part, does not hinder but that God may allow this liberty to those who will and do use it well. In like manner, though many or most parents, will, and do, in fact, instruct their children very wrongly about matters of religion; yet we are not from thence to conclude, that God does not allow to every parent a liberty of instructing them rightly. On the contrary, he makes it their duty so to do; because their doing it is necessary for the welfare of the children, who would otherwise be, in many cases, quite uninstructed, to their own very great disadvantage, and that of the public. In like manner, the making a civil establishment of religion being naturally productive of very good effects to mankind, if rightly made, there is reason to think that God will approve it, when so made, though not when otherwise.

THE second objection is, that even when the true religion is established, yet the annexing of civil advantages to the profession of it, will naturally cause many persons to profess it, merely, or chiefly with a view to these civil advantages. Now such a profession is in no degree acceptable to God, but, on the contrary, greatly displeasing to him: and in particular, is contrary to the genius of the Christian religion, the sanctions of which were designed to be not of this world; therefore we cannot suppose that God approves any such establishment.

To this objection our answer is, that the civil advantages annexed to the profession of the true religion, ought not to be designed, nor are they by good sovereigns designed, to tempt or engage men to a profession of it against their consciences, or even at all to lessen their regard to God, to the reason of things, or to the spiritual[s] sanctions of his laws. On the contrary, good sovereigns will always design that men should be no further influenced by the prospect of those civil advantages than they ought to be. The good sovereign's design is only,

[s] In any country where there is a free toleration, so that every man is allowed to believe and practise whatever he judges fit, in all matters of religion, there can be no ground to affirm that the legislative authority of Jesus Christ is at all invaded, or the spiritual sanctions of his laws impeached. If men, in such a case, have not the regard to them they ought to have, the fault is only their own; neither the public establishment, nor the sovereign who makes it, are at all to be blamed.

that men of all sides should be easy, and fully at liberty to profess and practise whatever religion they judge to be true, provided it be not detrimental to the civil state; and at the same time to secure, as much as he well can, the peace and welfare of it. He does not desire that any man should be at all influenced by a view to those civil advantages: if any be so, the fault is only in himself.

You will say, perhaps, that men ought not to lay temptations, or *put stumbling-blocks in the way of their brethren* [t], even though it be the fault of these latter only that they fall over them. (See bishop Hoadley's Rights of Subjects, p. 259, &c. Now this indeed is true, when there is no moral necessity or great advantage from doing the things, which, in event, prove to be stumbling-blocks, or occasions of falling to other men. For, in that case, a charitable regard to others ought to prevent us from doing such things. But when the doing them is highly expedient or necessary for the public service, or for that of [u] many other Christians, or even for our own just and important private advantage; and needs not, unless by their fault, be at all hurtful to any; it then, certainly, is justifiable to do such things. And this plainly is the case of civil establishments of religion.

A THIRD objection against the lawfulness of making a public establishment of religion, is raised from the nature and primitive constitution of the Christian church, and of the spiritual liberty and privileges, with which our Saviour endowed it. Though he did not intend, say these objectors, to deprive the governors of civil societies of any part of the authority to which they were intitled in virtue of that character, yet he plainly designed, that they should not interpose in any merely spiritual affairs of his religion. In these indeed, as far as they were not detrimental to the civil state, they had no right by the law of reason to interpose; on the contrary, they were obliged to tolerate all such inoffensive notions and practices, and to leave them to the consciences of the parties concerned. Now the distinguishing in-

[t] ROM. xiv. 13.

[u] The primitive Christians made frequent contributions of money, for the benefit of their poorer brethren; which tempted and engaged some bad men, as Peregrinus the philosopher (see Lucian de ejus Morte) to profess and pretend to be Christians that they might partake of those contributions. Did this circumstance make it wrong in the Christians to contribute for this purpose? Certainly not.

stitutions of the Christian religion were all of this kind. Our Lord rightfully might oblige his disciples to profess their faith in him, openly, as there should be occasion: "To meet together at certain times for the public worship, with the use of the two sacraments of baptism, and his eucharist. He might set apart certain persons, who, consistently with their obligations to the civil state, might be to preach the Gospel, to administer the sacraments, govern the church after his decease, and commission others, after them, to act for these same purposes."

OUR Lord, and his apostles inspired by him, might further oblige all his followers to pay a due respect and obedience to these church governors in things spiritual, "To provide a fit and constant maintenance for them, and to raise money among themselves, by voluntary contributions, in order to defray all the expences incident to publick worship, and for works of charity necessary towards their poor brethren." All these things we accordingly find him in the Scriptures to have actually done, without any regard to the sovereign, or other civil governor under whom he lived; and in pursuance of his example, institution, and command, all these things continued to be done through the first three ages of the church; during most of which time the Roman emperors, who were its civil sovereigns, harrassed it with almost continual persecutions. If those sovereigns had then been vested with an authority of appointing and settling the articles of the Christian faith, or even of appointing the times, the places, and modes of public worship, but especially if they had been vested with an authority of chusing the bishops and other spiritual officers of the church; they would either have appointed none of these, or else such persons as should have endeavoured to corrupt, suppress, and put an end to this religion. And these same effects any other sovereign, in any other age, must have it in his power to produce, if he, in virtue of his civil office, were intitled to all these authorities abovementioned in the Christian church. Which consideration shews, with what reason and wisdom our Saviour, to the end that his church might perpetually subsist, lodged all these branches of ecclesiastical authority in its spiritual governors and clergy, or if not all in them solely, yet at least conjointly with the laity of it. He did not, indeed, exclude civil sovereigns as such, any more than other men, from entering into his church, and continuing members of it. On

the contrary he obliged them, as well as all other men who should have opportunities, to become, and remain always members of it, in order to their having the benefit of that salvation, which his sufferings and death had purchased for mankind. But when civil sovereigns were to embrace this religion, they were not by so doing, in course, intitled to any ecclesiastical authority in it. For though they retained all their civil authority, and, in respect to it, the governors of the church were to continue as much subject to them as they were before; yet as members of the church, sovereigns were to be considered as void of any spiritual authority, and were obliged to submit to the settled regulations and practices of the church, not hurtful to the civil state, without interposing, in an authoritative way, to censure or alter them, without the consent express, or supposed, of the church and its governors. As this, say the objectors, was the primitive constitution of the Christian church, for very wise reasons made by our Saviour, and was in all appearance designed to be perpetually continued, there is, from thence, ground sufficient to think he did not intend, that any civil establishment of his religion should ever be made. Because, by these establishments, sovereigns would of course interpose more than would be right in the affairs of the church, would have an undue influence in the settlement of articles of faith, would get into their hands the appointment of church-officers, would corrupt and hinder the exercise of its discipline, and so would have it in their power to alter, and even put an end to its primitive and free constitution, and defeat the purposes for which it was designed. There is no room to suppose, that our Saviour would approve these consequences; and therefore we ought not to suppose, that he will approve or allow the making a civil establishment of his religion.

IN replying to this objection, we must admit, that some of the particulars alleged in it are true. Our Saviour himself did, without having been directed by, or consulting any civil sovereign, declare all the chief articles of faith, and of practice, with the modes of worship in his religion. He himself chose and appointed the chief ministers of it, and gave them authority to appoint others. He mentioned the discipline that he designed should be exercised; and he declared, that his ministers ought to be maintained, and duly respected by his followers.

FARTHER;

FARTHER; divine providence ordered things in such a way, that for the first three centuries, the church not only continued in spiritual matters, quite independent on any civil sovereign, but was for most part of the time persecuted by them; a course which seems to have been taken for this reason, among others, "That the essential difference and distinction between the Christian church and the civil state, might be more plainly visible, and a precedent might be given for the subsistence of the former, independently of the later, whenever there should be a necessity for it.

BUT from this course which was at first taken by our blessed Saviour, we cannot justly conclude that he will never allow any civil establishments to be made of his religion. On the contrary, even from the different constitutions and circumstances of these two societies, there is a great probability, that he designed civil establishments should be made of it; because, when the Christian religion should be so far propagated in the world, that the whole or the greater part, of many civil societies would come to profess this religion, it would be very difficult, without a public establishment, to keep the ecclesiastical and civil governments of any nation in due harmony and peace with each other. This might, indeed, as far as the nature of the things is concerned, be very well done [w], if the governors on each side would always make a right use of their authority, and keep it in its proper bounds, without any usurpation of the one upon the other; but, as the dispositions of men will often be, this cannot be expected to be at all times done on either side; one or the other side will often be for enterprising and encroaching beyond its just bounds; which, if it were to be done by the governors of the civil society, they would sometimes acquire an authority destructive, or at least very corruptive, of the true religion in their dominions. On the other hand, if the governors of the religious society were to encroach and usurp greatly upon the civil, their doing so would not only tend very much to disturb and weaken the civil society, but even to corrupt and greatly hurt the true interests of the Christian religion itself. And, therefore, to prevent these ill consequences, and the broils and disturbances that would almost perpetually be happening between them, the best course

[w] See Rights of the Christian Church, p. 34, 35.

is, "That the religious society would accept of, and submit to, an establishment made of it by the civil sovereign, who thereby will be intitled, as hath been shewn, to the authority necessary to keep things upon a right bottom, to preserve the quiet, and act for the real interest of both the societies." Thus we may argue, from the constitution and true interest of both the church and the state, for the civil establishment of the former by the latter.

NOR is there any argument to be drawn from the holy Scriptures, against such a civil establishment of the true religion. The ancient prophets of the Jewish dispensation, rather intimate that, in process of time, *kings should become nursing fathers*, to the future Christian church, and *its queens nursing mothers* [x].

AND in the constitution of the Christian church, or any part of it, every thing may be rendered consistent with such establishments. For though indeed the Christian religion was designed to be chiefly subservient to mens attainment of eternal happiness, yet as far as it may conduce also to promote their temporal interest, without any hindrance to the former, there is just ground to think that God intended it should be so, and that all disputes and contests between the ecclesiastical and civil societies, which are apt to arise from the weakness, or malignity or ambition of men, should be, as much as possible, avoided.

Now to these ends it is very expedient, as hath been here shewn, "That civil sovereigns, when Christians, and, as such, likely to be in reality concerned that this religion should obtain its proper effect, should take upon them to settle, maintain, and defend the church, which they judge to be the true one, in the profession and practice of this religion, agreeably to right and good order, from any force that might be employed against it. And to secure a constant and fit maintenance for the officers and ministers of it, this conduct must be much to its advantage upon the whole." And, therefore, the governors and people of such the true church may justly consent to its taking place; and also to the sovereign's having some such concern and agency in matters ecclesiastical in consequence of it, as will not really be hurtful to the

[x] ISAIAH xlix, 23. See Vitringa in loc.

real interest of religion. From this consent of the church, the sovereign may derive an authority and right to do several things relating to the polity of the church, which right he would not have had merely from his character of civil sovereign. In particular,

FIRST, the church may very justly consent, that he shall give his civil sanction to such articles of faith, as she, *i. e.* the generality of her members, professedly judge to be agreeable to the holy scriptures, or true in themselves.

His giving this sanction to them is no invasion of the legislative authority of Christ, which remains intirely as it was: for the clergy and people are not by this establishment forced or obliged to believe or profess these articles, any more than they were before; they are only intitled to some new civil advantages by so doing, which advantages they are at liberty at any time to give up, and to declare their misbelief of any of the said articles, if they should see reason so to do. This liberty they ought always to reserve to themselves, and to their children, and they ought to be understood and supposed so to do.

ON the other hand, the sovereign, if, after he has established any such articles, he finds reason to think them false, is equally at liberty and obliged to discard such articles out of his establishment, and to introduce into it such other articles as he judges to be true and expedient, or necessary to be made parts of it. But a wise sovereign will be very cautious, how he multiplies the number of such articles of faith; because, such will always tend to raise and promote differences of opinion, discords and contentions among his subjects, which differences it is one great design of an establishment to prevent. It will therefore be true wisdom in a sovereign to establish as few articles of faith as well may be, to be publickly professed by the people, or even by the clergy, and those essentially necessary, and evidently true ones. There may, indeed, be circumstances of the church and the state, that may oblige or induce a sovereign to establish considerable numbers of articles of faith: for instance, when a false and corrupt religion, that hath long obtained in the nation, is to be abolished; in that case, a good number of negative declarations against it may be requisite, especially on the part of the established clergy: but in general, when a sovereign can well do it, the most prudent course is, to establish only
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the principal and necessary articles of religious faith, and to make the forms of publick profession and worship, in consequence of them, be as general and comprehensive as possible; and expressed, as nearly as may be, in the very terms of the holy scriptures.

WHEN this is done, if any persons concerned to do it refuse to profess these articles, he may justly deprive them of the benefits of his establishment; I mean, that he hath a right so to do with regard to men; for as far as they are concerned, he has a full right to judge for himself, of the truth of any articles of faith, and to give or refuse an establishment to them; they have no right to force or oblige him to establish any, but what he judges to be true. But it is also to be observed, that if he judges wrongly, and gives an establishment to a false religion, he will be blameable for so doing in the sight of God. For the giving an establishment to a false religion, tends to promote and spread it much more than it would otherwise be among the people, which is a thing evil in itself, and must certainly be displeasing to God; and therefore no sovereign can have a right, properly speaking, to do it, even though his doing it may be an advantage to the civil state: For St. Paul has declared, that we must *not do evil, that good may come* [y]. A sovereign can only be justified before God, when he establishes the true religion. But with regard to men, his establishment, even when it is of a false religion, ought so far to take place, as that they can have no right to force or oblige him to alter it, or to establish what they think to be the true one, or even what really is so; yet when there is an establishment of what they judge to be a false religion, they still have a full right to be allowed a liberty of professing and acting according to that religion which they judge to be true, provided it be not detrimental to the civil state: and they may even form separate churches to this purpose; the lawfulness of which conduct will depend upon their judging rightly as to the articles of faith in question, or upon their being sincere in their error. Thus much as to the sovereign's establishing articles of faith.

As to his injoining ceremonies, or modes and times of public worship, he is, with regard to these, intitled to somewhat more authority,

[y] ROM. iii. 8.

and the people and clergy are somewhat less at liberty; provided, that the ceremonies and rites he enjoins, be either of some good tendency in religion, or, at least, be of no ill one, *i. e.* be indifferent in their own nature. In that case, if he judges them to be useful, either to religion or to the civil state, he may reasonably enjoin them, and the members of the church established cannot reasonably refuse to comply with them; for in the regulation of things when acknowledged by them to be indifferent, his judgment and authority ought to take place to a proper degree in matters as well religious as civil. It would be wrong, indeed, in him to multiply ceremonial practices too much; for this might tend to the undue amusement or dissipation of the thoughts of the worshippers; and would be unsuitable to the genius of the Christian religion, which lays the chief stress upon worshipping God in *spirit and in truth* [2]. If the ceremonies be hurtful to these, the clergy and people, or any part of them, will have a right to decline joining in such established worship. But if the ceremonial practices enjoined by the sovereign, be but few, and not improper; in that case, as there must be some regulation of ceremonial and indifferent matters, it is fit, under an establishment, that they should be determined by the sovereign, at least after consultation with the ecclesiastical governors.

AND when they have been so settled, it becomes the duty of all members of the church, whose conscience will allow them, to conform to them. It will not in that case be a sufficient excuse for non-conformity, to alledge that they are incroachments, or usurpations upon their Christian liberty; for this liberty ought to give way in such cases, to the judgment of the sovereign, with regard to the expediency of such regulations. If, indeed, any members of the church really judge that those regulations are inexpedient in so high a degree, that they will be hurtful to true piety, they ought not then to conform to them; but it would be wrong in any person designedly to raise and cherish scruples in himself, or in others, on such accounts; he ought on the contrary to endeavour to quiet and satisfy them. For a respect to civil authority, and a charitable regard to the peace and spiritual welfare of other men, are of much more value in the sight of God,

[2] JOHN IV. 23.

than a scrupulous attention to guard against impositions upon religious liberty, when nothing unlawful, or inconsistent with true piety, is imposed.

BUT then it is also true, on the other hand, that it is better for a sovereign to forbear making any such impositions of ceremonies or ritual practices, as much as he well can; for though his subjects ought to comply with them, as far as in conscience they can, yet it may happen that great numbers may not be able to reconcile their consciences to them; and they will be obliged on that account to separate from the publick worship, which separation may occasion factions dangerous or inconvenient to the civil state; and even only in a religious view, a wise and good sovereign will be backward to impose such unnecessary things, where it is fully in his power to forbear doing it, or to let them drop that have been formerly imposed. This latter, indeed, may not always be expedient; because, when such ceremonial practices have been long used in a nation, and the generality of the people have by custom been attached to them, many might be uneasy if they should be laid aside; and, in that case, a wise sovereign will continue things as they are: but if there ever be a juncture, when such things can be omitted without any ill consequence, a wise sovereign will always endeavour to reduce the external worship of God to a proper noble simplicity, which will be the way to avoid exceptions and discontents about these matters, and contribute greatly to an union and harmony among his subjects.

THE sovereign may, farther, receive from the church an authority and right of nominating and appointing her spiritual governors and others of the clergy. The sovereign hath not this right merely in virtue of his temporal character. Grotius certainly was wrong in ascribing, as he does (*Imp. Sacr.* 265. See *Præf. de habitu*, p. 133.) this authority to all sovereigns, even Infidel ones. Our Saviour plainly did not allow it to the Roman sovereigns, in his own time; nor seems to have designed that their successors, or any other sovereigns, should have it merely in virtue of that character; for that circumstance would have put it into their power at any time to have suppressed, or at least very much to have hurt his religion. He, or his apostles in his name, prescribed another method for the appointment

ment and ordination of the ecclesiastical ministry, viz. by the imposition of the hands, first of the apostles, and afterwards by those of the persons ordained by them and their successors, *i. e.* by the bishops for the time being, with the consent and testimony of the people in each church. This hath been the sense and practice of the church all along; and in the primitive church, no bishop or other clergyman whose sacred character was derived from the sovereign only, would ever have been acknowledged by the church or people, to have been vested with such a spiritual authority and character.

BUT though the sovereign cannot, merely as such, have this right, either of nominating or appointing spiritual ministers, yet he may have it from the consent of the Christian church and its governors, in the particular nation of which he is sovereign, or of that part of the nation, at least, which accepts and acts under his establishment; I mean he may have it, not perpetually, absolutely, or irrevocably; for then some sovereigns might use it to the corruption or destruction of that part of the church; but he may have it for as long a time as he uses it well. No Christians of any age can lawfully give this consent, so as to bind their posterity; even they themselves must be at liberty to retract it, on any just and pressing occasion. Now the sovereigns having it upon these terms may be for the real benefit of the church, as well as of the state; because, the sovereign may nominate and appoint as proper clergymen as the church governors could do, and more proper, in all appearance, than the people would do. It is, indeed, the sovereign's interest so to do; because such clergymen would be most likely to act well for the service both of the church and of the state; at the same time, that their obligation to the sovereign will attach them as much as may be to his interest. Now this authority in the sovereign being really expedient, both for the church and for the state, therefore the governors and people of the church may properly consent to it, upon the condition above-mentioned; and it is justly presumable that it is not disagreeable to the ordinance of Christ. The consent of the church and people may sufficiently appear, either from express laws, or other public transactions, or from a long uncontradicted custom, and from the actual adherence of the majority to it.

THE sovereign may also have, upon the same foot of the church's consent, an authority to take care that the established clergy perform their duty well, according to the rules of the holy scripture, and to the terms of his establishment. He had, indeed, merely as civil sovereign, without making any establishment of religion, a right to take care that no part of the conduct of any ministers of religion should be injurious to the civil state, while as to matters merely of their religion, he had no right of interposing; but, as he is the head of the establishment, he has a right to know whether the bishops and clergy be, in his judgment, orthodox in their doctrine, regular in their sacred ministrations, and pious in their examples. Because, if they be not so, they do not answer the design of his establishment; and if they be notoriously faulty in any of these respects, he may have a right to deprive them, by the intervention of ecclesiastical authority, or even without it, where their maintenance depends wholly upon his establishment. This right in the sovereign, as long as it is well used, must be supposed to have been consented to by the ecclesiastical governors and people.

THE established sovereign may, upon the same principle, have a right to appoint and license all assemblies of the clergy, designed to make canons and constitutions for the government of the church; indeed, merely as civil sovereign he had a right to consent to the assemblies of the clergy for this purpose; for though, without his leave, any religionists, not detrimental to the civil state, had a right to assemble for the public worship of God, it is not so clear that they have a right to assemble in order to make canons, &c. because the making them can seldom, if ever, be necessary to the essential purposes of religion.

BUT even though a sovereign, as such, had not a right to assent to assemblies, merely for making canons, he has, certainly, that right when he gives an establishment; and withal, has a right of judging what canons may be consistent with, and useful in his establishment, and of rejecting those which are not so; and giving a civil sanction to those only which he approves. Because, otherwise, canons would or might be made that would obstruct or defeat the ends of his establishment.

HE may, in like manner, be authorised to have an inspection and control upon the jurisdiction of the church, even that which results from her constitution as a spiritual society: for though this authority

was given to the church by our Lord, it is not necessary that she should, nor is she obliged, always to exert it: this hath been allowed by St. Austin and others. She may, therefore, forbear to exercise it for reasons of convenience to herself and the public; when she does exercise it, she ought always to do it with clear equity, and prudence, and impartiality. And the sovereign, who makes the establishment, has a right to judge whether she does so or not; to redress any irregular proceedings; to prevent their causing any disturbance to the state; or oppression, or unjust damage to the liberty, estates, or reputation of any members of the established church; for which end the sovereign has a right to receive appeals, to reverse their sentences, if he judges it needful, and to be himself exempt from their jurisdiction. For how absurd would it be for him who is the head of the society, to be excluded from being a member of it? The cases of the emperor Theodosius [a], and of Ludovicus Pius, are not precedents sufficient to the contrary. If a sovereign behaves so plainly against the welfare of the Christian church and religion, that he ought no longer to be suffered to be at the head of it, then the members of the church must give up his establishment; and, in that case, they may excommunicate him, but not while they continue under his establishment. Such an ejection could never rightfully be made, while an appeal lies to him in all cases of the church's jurisdiction. It is therefore plain, that the establishing sovereign must have a right to review and judge, upon appeal, of all acts of jurisdiction exercised by the ecclesiastical governors of the church, and to reform, redress, and annul them as he finds it needful, and that he must himself be totally superior to, and exempt from, their jurisdiction.

It is true, that the sovereign will not have any of these authorities over those who dissent from, and refuse to submit to, his ecclesiastical establishment; for as they have not any benefit from it, of maintenance for their ministers or the like, they are not subject by their consent to these ecclesiastical authorities, which the sovereign derives only from the consent of the members of the church established. He cannot, therefore, justly interpose to judge of the censures of the dissenting congregations!

[a] See Stillinfi. Irenic. p. 447.

gations, nor to restore the members excommunicated by them; they are upon a foot, in this respect, independent of him.

BUT then it is likewise evident, on the other hand, that if the establishment be of the true religion, and, as such, be really for the benefit of the established church, and also of the civil state, it will then be the fault of all the subjects of the latter, who do not consent to this establishment, which, in reality, they ought to do; and therefore though they are not punishable by the sovereign, who (as I have shewn) is obliged to permit all his subjects to worship God and practise religion according to their own judgment, in all things not detrimental to the civil state; yet they will, at the same time, be blameable before God, and will be punished by him hereafter, for acting against the welfare of the civil state, except in one case, *i. e.* unless their error in judging wrongly about this establishment, hath been invincible, that is, hath not proceeded from a vitious want of consideration, arising from prejudices, that might have been overcome, but from causes not in their power to alter; in this latter case, indeed, they will be acquitted.

BUT still they may, by the civil sovereign, be justly subjected to those taxes that are necessary for the maintenance of his ecclesiastical establishment; for as this is really for the benefit of the whole civil community, therefore all the members of that community may be justly subjected to the taxes that are necessary for its support; even those members who are under an invincible error with regard to it, because the sovereign cannot certainly know that any particular persons, who dissent, are under such an invincible error; and even if he did know it, yet their error ought not to exempt them from contributing to any public burthen expedient to the whole, and necessary to be laid on all the members of the community.

LASTLY, if any of the dissenters are visibly and plainly, or if there be just grounds to suspect that they are so extremely averse to the ecclesiastical establishment, and so fierce and resolute in their dispositions, that, if they had opportunity, they would endeavour to subvert and destroy it [b]; in such case, all persons of these dispositions may be justly

[b] Prynne, p. 112. speaking of the Independents, Anabaptists, and other sectaries in England, during the latter part of the troubles after 1648, &c. says, "They would have none dissenting from them in opinion or party, either in the parliament, army, or any place of public profit or trust, were it in their power."

excluded from such civil offices of trust, profit, and power, as might give them opportunity and means to act with a prospect of success against the ecclesiastical establishment. For whatever right they may otherwise have to a capacity of such civil offices, upon the foot of their loyalty and affection to the civil state, considered merely as such, yet as being disaffected, and enemies to the ecclesiastical establishment, which is really, and greatly, for the benefit of the civil state; they are, on that account, to be considered as so far disaffected to the civil state itself; and therefore may justly be kept out of offices of power, trust, and profit under it, by which offices they might be enabled to subvert and destroy the ecclesiastical establishment, and thereby very much hurt the civil state itself: for all the rights and capacities of every member of the community are subject to, and ought to be limited by, considerations of the public welfare.

A P L E A

A
P L E A
F O R T H E
S A C R A M E N T A L T E S T, &c. †.

Οὐκ ἂν σιωπήσαιμι τὴν ἄτην ὁρῶν εἰχῆσαν ἅτοις ἀντὶ τῆς σωτηρίας.

THE Protestant dissenters from the church of England have lately made very great complaints of their being obliged to receive the sacrament of the Lord's Supper once in this church, whenever they take an office in the state. They have publicly affirmed, that the laws [c] by which this is required are unjust, repugnant to the end for which this sacrament was ordained, and productive of much impiety in those by whom, in such cases, it is unworthily received. They have declared their resolutions of applying to the legislature for relief; and in order to do it with the greatest weight, have held several numerous assemblies of their friends, in which committees were appointed to act on their behalf, towards procuring a repeal of the corporation and test-acts, and were sent in form to solicit the ministers of state on this account. And though, upon the reports which these

† This piece published in the year 1736, under the title of *A Plea for the Sacramental Test, as a just Security to the Church established, and very conducive to the Welfare of the State*, being but in few hands, and having a close connection with the general subject of these tracts, and of the third in particular, the editors have thought proper to subjoin it here.

[c] By the 13th of Charles II. Stat. 2d. chap. 1st. it is enacted, That no person shall be capable of being elected into the office of mayor of any city, town, &c. or in any other office concerning the government of them,---that shall not have, within one year next before such election, taken the sacrament of the Lord's Supper, according to the rites of the church of England.

And by the 25th of Charles II. chap. 2. it is enacted, That all and every person or persons, that shall be admitted into any office or offices civil or military, shall receive the sacrament of the Lord's Supper, according to the usage of the church of England, within three months after his or their admittance into or receiving their said authority or employment, in some public church, upon some Lord's Day, commonly called *Sunday*, immediately after divine service and sermon.

committees made in the years 1732, and 1733, that those were not fit times for bringing the matter before the parliament, the dissenters were prevailed upon to defer it; yet many of them did this with great reluctance, and not without professing that they were determined, very soon to pursue this point with all possible vigour. According to which resolutions, they have been ever since making such applications as they judge would be most serviceable to their cause.

IN this state of things, it cannot but be right in any one who approves the establishment of the church of England, to vindicate as far as he can those laws which contribute very much to its support, from the charges made upon them, and to shew that they are not only just, but expedient to be continued. This has indeed been done some time ago by an excellent writer [d], who fixed upon the true principle for the defence of these laws, and said as much as was then necessary to maintain it. But as, since that time, some objections have been made, and the general principle has with great freedom been treated as false; it may be not improper to offer some farther thoughts upon this subject. I purpose to do it in the following papers; with regard to which, I have only to desire, that they may be read as I write them, with hearty concern for the lasting safety and welfare of our country.

IN order to vindicate the laws which enjoin the sacramental test, the first step must be to clear them from the charge of injustice, which the dissenters make upon them in very invidiously aggravating terms. They endeavour to make good this charge by alledging, that as free-born subjects and well-affected to the civil government, they have a natural right to a capacity of serving their country in all public offices, which they might often do to its great advantage. But the laws that oblige them, as a necessary condition of their holding offices, to communicate with the church of England, do, without just reason, intrench upon, and, in the case of many of them, quite defeat this capacity of offices to which they have a right; and therefore those laws are unjust. This, I think, is the reasoning of the dissenters upon this

[d] Dr. Sherlock, late lord bishop of London, in his vindication of the corporation and test-acts. Printed A. D. 1718.

subject, in its utmost force. In opposition to which, I humbly conceive, that the restraining condition thus put upon their capacity of offices is just; in regard that if all Protestant dissenters were capable of holding public offices, without the sacramental test, or some other equivalent means of excluding those who are so averse to the church of England, as to think that communion with her is unlawful; the consequence would be, that the establishment of this church, which is of great advantage to the state, would be endangered, and this danger would produce animosities and contests among the people, which would be of very ill consequences to the safety or the interest of the state: and therefore the dissenters capacity of offices is justly restrained, on a principle generally acknowledged to be true; to wit, that the civil rights of subjects ought to be submitted to, and may be diminished for the public good. I have given our whole reasoning thus in short and without disguise, that the reader may the better make a judgment of it; for in a matter of this consequence to our country, or indeed in any question debated in public, to raise clouds of dust in order to cover a bad cause, is a procedure unworthy of a man of probity, with whom no motives ought to prevail above his regard for truth and right. But that the force of this argument may be duly apprehended, it will be necessary to make some enlargement upon the several particulars it contains.

For which purpose, the first point to be considered is, whether the admission of the Protestant dissenters to a capacity of offices, without some such restraint as the sacramental test, will not, in the natural course of things, endanger the present establishment of the church of England? That the Presbyterians, who of all the sectaries come the nearest to this church in doctrine and discipline, would yet desire the subversion of her establishment, if they had power to effect it, Mr. Rapin Thoyras, who knew them well, and was not prejudiced against them, was entirely satisfied [e]. And it must indeed be evident, to

[e] Dissertation sur les Whigs et les Tories, tom. x. de l'histoire d'Angleterre, à la Haye 1727, p. 253. "Il est certain que, si les Presbyteriens se voyent jamais en état d'agir sans opposition, ils ne seront point contentes qu'ils n'ayent ruiné de fonds en comble la Hierarchie, et en general toute l'Eglise Anglicane." It is certain, that if ever the Presbyterians are in a condition to act without being opposed, they will never be contented till they have totally destroyed the Hierarchy, and in general the whole church of England.

any one who considers the general dispositions of the bulk of mankind, together with the history of [our own nation. Men are naturally desirous that their own way of thinking should prevail. They are wont to approve and favour persons of the same opinion with themselves, in preference to others; especially when they think, not only that their own opinions and practices are right, but that those of their opponents are sinful, and that therefore it will be for the honour of God to have the latter be suppressed, and their own be promoted. Inducements of this kind are generally sufficient to put them upon endeavouring to spread their own notions; but most of all, when any secular advantage may be gained by so doing; for then human passions, mixed and covered with religious pretences, and thereby appearing to be justified, make them frequently act with extraordinary vehemence.

THESE are so much the common workings of human nature, that the law-givers in all states have thought themselves obliged to guard in some degree against them, for fear of their producing such enmities and contests among the subjects of different religions, as might in the end disturb the public. Accordingly, as it has been a maxim, in all civilized states, to establish some religion; so, whenever there has been any other religion professed by such numbers of the subjects, as to be likely to rise into competition with the established one, the governors have always thought it fit that public officers of trust and profit should be confined, as far as the circumstances of the state would allow, to the professors of the latter; in order to give it such a superiority as would be requisite to preserve the public peace. I need not give instances of this conduct to those who are competently skilled in history: they must know it has been generally used by the wisest and best governed nations in the world.

SOME few instances indeed may be given of countries, in which there have not been either any laws excluding all non-conformists to the established religion from employments in the state, or any religious tests designed for that purpose; but their governors have been at liberty to give offices to such persons when they should think it proper, and have actually employed them upon some occasions. The dissenters alledged, that this is the case in the United-Provinces of the Netherlands, and in some parts of Germany. But in answer to these

instances I must observe, that the political constitutions of those countries are so different from that of England, that no just argument can be drawn from their practice on some particular occasions, to prove what ought to be done among us. In those countries no offices of trust or profit, and much less any seats in the legislature, can be obtained by applications to the people only, without the approbation of persons in the government. For even in [f] Holland, the burghers at large of the several towns have no share at all in the choice of deputies to the states, nor of their own magistrates, senators, or other persons in employments civil or military. The right of chusing all these, and disposing of all posts of trust or profit, lies either in the senate of each town, or in the provincial or general states. And a very great majority of these being Calvinists, they have it in their power effectually to hinder persons of any other religion from coming in among them; so that they have no need of any positive law, or any religious test to exclude them. And the like means of exclusion are equally needless in Prussia, and other parts of Germany; in which the princes being absolute, have the magistracies and every thing else at their own disposal, if they think fit; and therefore they need not fear having more persons than they desire in public posts, of a religion different from the established one. They want no standing laws to keep them out. And yet it is farther observable, that even in those countries, the non-conformists thus employed have generally been but few at a time; they appear to have been taken rather out of necessity, or particular convenience to the state, than out of free choice, and they have been made use of in those cases only, when there has been no ground to apprehend that the religion of the state would be endangered or affected by them: all which circumstances plainly shew that those nations which at any time have taken this course, have been as sensible as others of the natural disposition men have to promote their own religion, and that therefore due care ought to be taken not to trust much power in the hands of persons ill affected to that religion which is established.

Now, are the dissenters from the church of England to be more safely trusted than any other men in any age or country of the world?

[f] See Sir William Temple's Observations upon the united-provinces of the Netherlands, chap. ii.

Are they free from the common passions and desires of mankind? Will they have no zeal for propagating their opinions in religion, nor any concern for advancing their secular interests? Will they never want to have a share of those revenues and privileges which the church of England enjoys, exclusive of them? Will they never be uneasy at being forced to contribute to the maintenance of the clergy of that church which they think so exceptionable? Would they not, if they had power sufficient, endeavour to put themselves and their religion upon a more advantageous foot? Perhaps some persons among them, who know what their present interest requires, may smoothly profess that they shall not aim at any thing more than an abolition of the test. But the bare professions of interested parties cannot justly expect to have credit given them, in a point of great importance to the public. There ought to be somewhat better grounds for making a judgment of what may probably be expected from the dissenters, in case they should be trusted with so much power, as I shall hereafter shew that the repeal of the corporation and test-acts would let fall into their hands. And one of the best means to judge rightly what they would do for the future, is to consider both what the temper and conduct of their predecessors in the separation have all along been towards the church of England, and how far the present dissenters appear to resemble them: for the like dispositions and opportunities will be apt to produce the like effects, in every age. Let us then take a short and general view of the conduct and temper of the dissenters, since their first separation from the church till the present time.

THE first objections made by the Puritans against the church, in the reign of Queen Elizabeth, were chiefly on account of the habits that were enjoined to be used by the clergy, and of the ceremonies to be practised by them and the people in the public worship. These habits and ceremonies were in great measure the same that are at present used in our church: and were then retained by the queen, not out of any superstitious regard to them (for she expressly and publicly declared the contrary) but partly in order to maintain a fit decency in the worship of God, and much more out of a charitable desire to keep as many as possible of the middle and lower sort of people in the communion of the church. The Queen well knew that they were very
 Q₂ much

much taken with outward forms, and were averſe to have any great alterations made in that religion which they had been uſed to. While, therefore, ſhe laid aſide all thoſe things that were really unlawful, ſhe thought it would be expedient to let the miniſtring habits, and a few other ſuch things, indifferent in their nature, continue to be uſed; becauſe theſe might contribute greatly to keep many of thoſe people in the church, and thereby get time for their being better inſtructed, and fixed in her communion, who, if they had ſeen all the forms of public worſhip at once entirely changed, would, probably have been ſo much ſhocked and offended, that they would have gone over to the church of Rome. This deſign, and the ſucceſs of the Queen in her proceedings, were plainly acknowledged even by Sanders a Popiſh writer [g] who ſays, “ that ſhe contributed very much to the firmneſs and
 “ eſtabliſhment of her hereſy, by not leaving the affair (of the reformation) to the humourſome management of the new clergy, by
 “ whoſe goſpel-liberty it had long ſince gone off into ſmoke; unleſs
 “ it had, by this human policy, been kept in bounds and ſupported.” As theſe were ſufficiently known to be the motives of the Queen’s conduct, and as the things enjoined were really indifferent in their own nature, it is wonderful that ſo much difficulty could be made about them. However, as ſome of thoſe who at firſt had ſcruples were men of otherwiſe valuable characters and peaceably diſpoſed, the Queen was willing to connive at their non-conformity, in hopes that time would ſoften and diſſolve their groundleſs prejudices. She not only bore, for ſeveral years, with their irregularities of this kind, but permitted many of them to continue poſſeſſed of their benefices, and even dignities in the church. But this forbearance on her part was far from having its deſired effect. The Puritans grew more attached to their principles, and more violent in their conduct. They openly declared againſt all impositions in religion, though of things indifferent in their own nature, and enjoined by the higheſt authority in church and ſtate. They reſolved not to be quiet, unleſs the public eſtabliſhment was altered,

[g] Nicol. Sanderi Hiſtoria Schiſmatis Anglicani. *Colonia Agrippina*, A. D. 1628, page 283. Certe fecit plurimum ad ſtabilitatem firmitatemque hæreſeos, quod non permittebatur res iſtius novi cleri libidini, quæ jamdudum hæc libertate evangelicâ abiſſet in fumum, niſi fuiſſet hæc humanâ politiâ & ſuſtentata & frænata.

and their own favourite platform of church-government and discipline was settled in its room. They made no scruple to affirm publicly in formal admonitions to the parliament, that this ought to be done; and when they found that applications of this kind would not gain their point with the Queen, who, for reasons that will hereafter be mentioned, was not inclined to favour them, they resolved to proceed in other methods. They fell into all the popular ways they could contrive to recommend their own scheme of worship and discipline, and make the liturgy and government of the church established, odious in the nation. Particularly, they treated the bishops, and clergy with grossly [h] indecent and opprobrious language. In the year 1566, they actually separated from the church, they soon after put their own discipline into practice [i] in those parts of the kingdom where their influence was the greatest, and in some of their writings gave out open menaces [k] against the civil government itself, if it would not comply and establish their scheme. These factious proceedings were the

[h] Mr. Cartwright, in his public lectures at Cambridge, as lady Margaret's professor, declared, "That in the church of England there was no lawful ordinary calling of ministers, nor any ministry: that the election of ministers and bishops at this day was tyrannous; and that archbishops, bishops, deans, and archdeacons, were but offices and names of impiety." *Strype's Life of archbishop Parker*, page 312.

"Our bishops (said others of the Puritans) are proud, popish, presumptuous, pastry, pestilent, and pernicious prelates; they are usurpers, they are cogging and cozening knaves; the bishops will lie like dogs. They are limbs of antichrist, monstrous ungodly wretches, that, to maintain their own outrageous proceedings, mingle heaven and earth together." *Strype's Life of Archbishop Whitgift*, page 298. More language of this kind might be produced, if it was proper to trouble the reader with it.

[i] *Strype's Life of Archbishop Whitgift*, page 290, and 327.

[k] Speaking of their own discipline, which they call the cause of God, they say, "that if it come in by that means which will make your hearts ache, blame yourselves; for it must prevail, malgre the malice of all that stand out against it, or such a judgment must overtake the land, as shall cause the ears that hear thereof to tingle." *Strype's Life of Archbishop Whitgift*, page 333, 334.

One of them (Payne) in a letter written to his friend, says, "It is more than time to register the names of the fittest and hottest of the brethren round about their several dwellings, whereby to put Suecanus's good counsel in execution, to wit, that if the magistrate will not, then to erect it themselves."

Another braggeth of "an hundred thousand hands, and wisheth the parliament to bring in this reformation, though it be by withstanding the Queen's majesty."

Others exhort their friends to "buckle with the bishops, and to massacre those malkin's ministers. Let the devil and his deputies the bishops do what they can: in the mean time, let us take our pennyworth of them, and not die in their debts." *Strype's Life of Archbishop Whitgift*, page 334.

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true reasons, as that wise and good statesman [1] Sir Francis Walsingham observes, why Queen Elizabeth altered her conduct towards them, and used greater severity than she had done before. She saw that neither her legal prerogative, nor the peace of the kingdom could be preserved, unless their turbulent spirit was restrained: and she was therefore obliged to practise some rigours, which at first were no part of her intention.

THE same reasons determined King James the First and King Charles the First, to imitate her conduct. But the wrong measures of those two princes, as to civil government, having given the Puritans who opposed the court, the advantage of becoming popular, and appearing to contend for the liberties of the nation, their party increased so much in that parliament of 1641, that at length, by a course of measures sometimes very artful, and at other times tumultuous, they obtained what they had been so long endeavouring, the abolition of the prelacy, worship, and discipline of the church of England, and the exaltation of their own Presbyterian scheme in their room. And how did they use their power when they had it? Did they suffer the clergy to retain their benefices and preferments? Or did they allow any congregations or private persons a liberty to worship God according to the service of the church of England? On the contrary, besides the attempts they made, by methods of iniquity, to blast the reputation of many of the

[1] In his letter to Mr. Critoy, in Burnet's Hist. Reform. vol. ii. p. 388, he says of the Puritans, "That for a great while, when they inveighed against such abuses in the church as pluralities, non-residence, and the like, their zeal was not condemned, only their violence was sometimes censured. When they refused the use of some ceremonies and rites, as superstitious, they were tolerated with much connivance and gentleness: yea, when they called in question the superiority of bishops, and pretended to a democracy in the church, their propositions were here considered, and by contrary writings debated and discussed.—But now of late years, when there issued from them those that affirmed the consent of the magistrate was not to be attended; when under pretence of a confession, to avoid slander and imputations, they combined themselves by classes and subscriptions; when they descended into that vile and base means of defaming the government of the church by ridiculous pamphlets; when they began to make many subjects in doubt to take oaths, which is one of the fundamental parts of justice in this land, and in all places; when they began both to vaunt of their strength and number of their partizans and followers, and to use comminations that their cause would prevail through uproar and violence; then it appeared to be no more zeal, no more conscience, but mere faction and division. And therefore, though the state were compelled to hold somewhat a harder hand to restrain them than before, yet it was with as great moderation as the peace of the state or church would permit."

clergy,

clergy, they required them [m] all to take that solemn league and covenant, with which they knew that the faithful sons of the church of England could not comply; and those who refused it they not only threw out of all their preferments, but generally sequestered their temporal estates, if they had any such, and on every the least pretence, found means, by the civil or military power, to harass and oppress them. In like manner the gentry, and others of the laity, besides the great hardships many of them suffered in their [n] temporal concerns, were all prohibited to use, or cause to be used, even in private, the liturgy of the church of England [o]. In case they did so, they forfeited for the first offence, five pounds; for the second, ten pounds; and for the third, were to suffer a year's imprisonment. Such rigours of different kinds were continued, till the body of the nation, unable to bear them any longer, most gladly restored King Charles the Second, with whom the church of England recovered her rights.

At this time, we may reasonably suppose that the spirits of the dissenters were much less violent than before; and we are therefore not to wonder, if they were somewhat inclined to an accommodation with the church of England. And yet there was a remarkable incident in the conference held for that purpose in the Savoy, which shews what a disposition they still were in, with regard to this church. The commissioners on her part desired them to propose what amendments they thought necessary to be made in the Book of Common Prayer. This service had been at first composed in the reign of Edward the sixth, by the united labours of a number of the most eminent divines, of whom some, in the following reign were martyrs, and others were confessors in exile for the sake of their religion. After several reviews, it had been approved by the highest authority in the nation at home,

[m] By a joint ordinance of the lords and commons, Feb. 2, 1643, it was provided, that the covenant should be taken in all places throughout the kingdom of England and dominion of Wales, by all above the age of eighteen: and that the committees of parliament should summon all the ministers, and cause the covenant to be tendered to them. Walker on the Sufferings of the Clergy, page 106.

[n] In the year 1643, the lords and commons made an ordinance, that none should bear office or trust in their armies, or in the kingdom, but such as had taken the covenant; nor even they themselves, if they had formerly been imprisoned or sequestered upon suspicion of malignancy. Echard's Hist. of England, vol. ii. p. 458.

[o] Scobel's Collect. of Acts, &c. chap. 57.

and by Protestants of eminent character abroad [p]. However, in compliance with the scruples of the Presbyterians, the commissioners were disposed to hear and examine the alterations they should offer: But instead of proposing any particulars, they thought fit to throw aside the whole liturgy at once, as hardly possible to be corrected [q] or rendered useful, and gave in a new one drawn up entirely by Mr. Baxter. There needs no great penetration to discover from what spirit such a piece of behaviour flowed, and how it might probably exert itself at more favourable opportunities. And can we then wonder, that the church was somewhat afraid to lay herself open to men of that character, by taking them into her establishment? Indeed, the Presbyterians were the less solicitous about being received, because they were encouraged by promises from the court that they should be taken care of, and have favour shewed them, if they continued in a body, and formed an interest separate from the church. The design of the court in applying thus to them, was really, that by keeping them up, as a set of people who were likely to be tolerated, they might gain at the same time a toleration for the Papists, about whom the king and the duke of York were heartily concerned. Whether the Presbyterians in general suspected this design, I will not positively affirm, though some of them have not scrupled to acknowledge it [r]. But

[p] The celebrated Grotius, in a letter to his brother dated April 8, 1645, says, "That the English liturgy was always accounted the best by learned men." See Le Clerc's edition of Grotius on the Truth of the Christian Religion, translated by Dr. John Clarke, page 331, where there are several proofs of the great respect which Grotius had for the church of England.

The learned Spanheim, writing to archbishop Usher from Geneva, in 1638, says, "I often call to mind that pleasing face of things in your church; that reverence in the public worship of God, that attention and fervour of your countrymen in the service of God,—the like to which you will hardly find elsewhere." Epist. Ded. part 3. Dub. Evang.

Mr. Gaches, whom Dr. Calamy, in his abridgment of Mr. Baxter's Life, page 568, styles a famous preacher at Charenton, speaking of the liturgy of the church of England, says, "I have read it a long time ago, and was wonderfully edified by it." Durel of the Government and Worship of the Reformed Churches, Lond. 1662, page 66. In which book are many other testimonies of foreign divines to the same purpose.

[q] Mr. Pierce, in his Vindication of the Dissenters, 2d edition, Lond. 1718, page 225, says, "That the very form of the English liturgy was disliked by the ministers, and they thought it much easier to draw up a new one, than to mend the old one."

[r] Mr. Pierce, in his Vindication of the Dissenters, page 228, says, "That the despised Presbyterians were not so stupid, as not plainly to perceive at what king Charles was driving." If this was true, is it not very strange they should cultivate an interest at court, so much as even Dr. Calamy allows they

But there is ground, at least, to think that their views of being supported, and continuing separate from the church, were much more agreeable to the chiefs of the dissenters, than the making any considerable advances on their part, in order to be taken into her communion.

THIS appears by their conduct, with regard to the endeavours used not long afterwards by some persons of eminence and distinguished moderation in our church to bring them into it. In 1668, lord-keeper Bridgman, lord-chief-justice Hale, and two or three divines at their request, had conferences for this purpose with some leading Presbyterians; but found them so backward to make any reasonable advances, or adhere to those that they seemed to make, that they grew weary of treating with them. Dr. Calamy in his letter to archdeacon Echard, p. 75, seems unwilling to believe the truth of an account given to this purpose in his history of England, vol. iii. p. 237, but he does not venture to contradict it, and his caution was just; for it might have been supported by a positive declaration made by Dr. Burton [s], who had been chaplain to the lord-keeper, and was one of the persons employed by him in this negotiation. And this may be thought very probable to have been the real disposition of the Presbyterians at that time, if we consider the account which Dr. Calamy himself has given of them, in his abridgment of the life of Baxter, p. 598, where he says, that about the year 1672, “so ill a spirit was got among some of
“ them, who but just before were in a suffering condition, that many
“ were much offended at Mr. Baxter’s preaching for union, and against
“ division, or unnecessary withdrawing from each other, and unwarrantable narrowing of the church of Christ.” We see that the dissenters could hardly bear with even those among themselves, who were for counsels of peace, and endeavoured to make them less averse to the church of England: from whence we may conclude, that they were in no fit temper for a treaty with her. “Accordingly, in the

they did? Who in his letter to archdeacon Echard, Lond. 1718, page 71, hath these words, “That the
“ Presbyterian ministers, both then and afterwards, depended on a court-interest more than they had any
“ just ground for, I believe to be very true.”

[s] See a Vindication of the Rights of Ecclesiastical Authority by William Sherlock, D.D. Lond. 1685, page 188.

“ year 1681, when a bill of comprehension was offered by the Episcopopal party in the house of commons, by which the Presbyterians would have been taken into the church,” we are told by a writer of those times, “ that, to the amazement of all people, their party did not seem concerned to promote it; on the contrary, they neglected it. And that this increased the jealousy, as if they hoped they were so near carrying all before them, that they despised a comprehension.”

THE truth is, the dissenters were, about this time, much exalted in their hopes, by observing what a change had happened in the temper of the nation, to the disadvantage of the bishops and the clergy. The bishops had made themselves very unpopular, by adhering to the court in some points of importance then in agitation; which though they might do with a good conscience, as thinking the measures of the other party were too violent and dangerous, to be for the true interest of the nation, yet so great was the ferment which had been raised by the Popish plot, that many were highly offended with them, and with the clergy in general, for acting as they did, and not falling into the warmest measures of opposition to the court. Not a few, even of the church, were alienated from them in their affections on that account. And of this the dissenters were so much disposed to make an advantage, that, as we are informed by the historian last mentioned [t], who was never violent against them, “ they behaved themselves very indecently: for though, says he, many of the most moderate clergy were trying if advantage might be taken, from the ill state we were in, to heal those breaches that were among us, they, on their part, fell severely upon the body of the clergy.” And presently afterwards he adds, “ that the press being open became very licentious, both against the court and the clergy. And in this the non-conformists had so great a hand, that the bishops and clergy apprehending that a rebellion, and with it the pulling the church to pieces, was designed, set themselves, on the other hand, to write against the late times, and to draw a parallel between the present times and them.” He is so impartial, indeed, as to acknowledge that this parallel was

[t] Burnet's Hist. of his own Times, vol. i. p. 461.

not decently enough managed by those who undertook the argument on the behalf of the clergy; he means, I suppose, that the writers on that side reproached the dissenters too severely with their former treatment of the crown and the church: But, as occasion was given to these reproaches by fresh provocations of the same kind, we cannot think it strange, that they were made with some severity. But, however that might be, the reader will perceive that this conduct, on the part of the dissenters, did not look like a design of ever coming into the church, but rather, of pursuing the same course they had taken before, to ruin her establishment, and raise one of their own in its stead.

AND to this, it is probable, they might be not a little encouraged by what they saw done at that time in Scotland. About the year 1670, [u] bishop Leighton, and others of moderate principles in that church, wherein episcopacy was then the established government, had been endeavouring earnestly to promote an accommodation between the church and the Presbyterian party. To which end, they were willing to desist from some points of superiority and jurisdiction over the clergy, which had been always claimed as the certain rights of the Episcopal order, and were really warranted by the practice of the church in its three first ages. Bishop Leighton entreated the Presbyterians, that considering the unhappy effects of schism, and the moderation of the church in making such advances, they would not be wanting on their part to accept these terms, which they might do with honour, as well as justice, and so restore an union exceedingly necessary for the interest of religion. But they were quite unmoved by all that he could say. They hoped, that by keeping their own party united, they should, at some time or other, oblige the civil government to come in with them. So, instead of making any steps on their side towards an agreement, they endeavoured to keep up the spirits of their people, in expectation that, at a proper juncture, they might work their way over the head of the church. And indeed, at the revolution in 1688, this happened as they expected. By their falling in with it, while the Scottish bishops and many of the clergy stood out against it, king Wil-

[u] Burnet's Hist. of his own Times, vol. i. p. 2902 97.

liam was induced to the abolition of Episcopal government, and the establishment of the Presbyterian in that kingdom. And when the gentlemen of this persuasion had once the power in their hands, they treated the poor episcopal clergy in the like, and even a worse manner, than they had before been used in England, when the Presbyterians prevailed there. Bishop Burnet tells us [w], “ that in the west of Scotland they generally broke in upon the episcopal clergy with great insolence, and much cruelty: they carried them about the parishes in a mock procession: they tore their gowns, and drove them from their churches and houses: nor did they treat those of them who had appeared very zealously against Popery, with any distinction.” And whoever will read five tracts written at that time, concerning the state of the Episcopal clergy, and an answer to them by Mr. Rule, may from them, and even from some concessions made by the latter, find reason to think that bishop Burnet did not exceed the truth in his account.

IN the other kingdoms, the revolution did not produce so great effects to the advantage of the dissenters. But as the success of their friends in Scotland, and the hopes they themselves entertained from king William, gave them high spirits, so where-ever they had any opportunity, they shewed sufficiently what they would be at, if they had power in their hands. In some parts of Ireland, the Presbyterians, being very numerous, used their wealth and interest as far as they could, to bear hard upon their neighbours of the established church, in the way of trade, and in other respects, that so they might be obliged, for their own security, to leave her communion. Of this the bishop of Derry, in his second admonition to the dissenters of his diocese [x], publicly complained. “ Some of your teachers, says he, p. 120, seem to be of as persecuting a spirit as the Papists, and have so far influenced the most zealous of their hearers, that they already persecute, as far as they have power, those that dissent from them; insomuch, that, as I observed before, some that are heartily desirous to come to church, dare not, for fear of being undone by their neighbours.”

[w] Hist. of his own Times, vol. i. p. 805.
don, 1696.

[x] Dated March 13, 1695, and printed at Lon-

And that this account was not aggravated, but that these oppressions were continued, has appeared since very plainly, by a representation from the house lords of Ireland to queen Ann, of which the substance was as follows: that the dissenters had opposed and persecuted the conformists, in those parts where their power prevailed, had invaded their congregations, and propagated their schism in places where it had not the least footing formerly;—that they refused to take conforming apprentices, and confined trade among themselves, exclusive of the conformists; that in their illegal assemblies, they had prosecuted and censured their people for being married according to law; that they had thrown public and scandalous reflections upon the episcopal order, and upon our laws, particularly the sacramental test; and had misapplied the royal bounty of 1200 l. per ann. in propagating the schism, and undermining the church; and had executed an illegal jurisdiction in their presbyteries and synods, &c. We see here what a spirit they shewed, and what use they made of their power, as far as it would go.

THEY had less encouragement to do any thing of this kind in England, because the body of the nation was heartily disposed to support the church. But the dissenters, presuming, more perhaps than they had reason, upon their interest in king William, and hoping that the weight of the court might go far in their behalf, did soon make some public steps which shewed what their views were even in this kingdom. Sir Humphry Edwin, who was lord-mayor of London in 1698, thought fit to go, with the ensigns of his magistracy, to a dissenting meeting. When this was complained of, by some writers on the side of the church, the dissenters answered in such a manner as shewed plainly how far they carried their pretensions. One who wrote on their behalf, some time after this affair, was Mr. James Pierce, whom I quote the rather, because he declares in the preface of his book [y], that it had given good satisfaction universally to his brethren, when it was published in Latin, and that it was the general opinion of his friends, that the putting it into English might be of service: So that this author may be justly considered as one who may let us know the general disposition of the dissenters towards the church of England.

[y] A Vindication of the Dissenters, &c.

Now he, speaking of this action of Sir Humphry Edwin, p. 276, of the first part of his Vindication, has these words: "If the laws permit the lord-mayor to frequent our assemblies, why might not he carry those ensigns of his magistracy with him?—One would think the church looks upon those fine things as her property, or supposes they have been hallowed by some bishop, and so were profaned by being carried into any place of worship not first consecrated by one of that order." This gentleman must have known, that the church of England does not look upon those ensigns of magistracy as hallowed, nor pretends any other claim to them, than as she is the church established by law; which may justly entitle her some degrees of respect, not claimable by dissenting congregations, which are only tolerated. But this reason, it seems, was not thought of any weight by our author; for in p. 278, he affirms, that the "religion of the dissenters is as truly established as that of the church of England." And again in the same place, "I acknowledge, says he, that the church of England was formerly the only religion established by law; but when the old severe laws against us were repealed, and a new one was enacted, that left every one to his own judgment in the choice of his religion; how can our religion be said not to be established?" And he is not contented to have raised their sect into an establishment, and thereby into a competition with the church of England, but he goes on to insult those of her communion, who might be uneasy on that account. "Oh men of Israel! says he, come in from all quarters, and help the distressed, whose sorrowful case is, since the first starting of the controversy, become much worse; for, ever since the two kingdoms were united, the Presbyterian has been an established and national religion in Great-Britain, in the same sense in which the Episcopal one is so; nay, in some sense it is more established than the Episcopal, in as much as the Episcopal may be altered by parliament, whereas the Presbyterian in Scotland cannot, according to the articles of the Union." And not thinking it enough to say that our establishment may be altered, he in other places makes no scruple to declare that it ought to be altered. "The generality of the English Presbyterians, says he, p. 204, as far as I can judge, don't

“ don’t differ much from them (the Presbyterians who took the covenant in 1643.) wishing the present very corrupt form of prelacy were abolished, and the true antient episcopacy were restored.” And unless this and some other things be done, he declares against any union or accommodation with the church of England. “ Let all our brethren, says he, p. 285, through the whole world be judges, whether we have not good reason utterly to forsake the tents of these men, and keep at the greatest distance from their communion.” After which he adds in the same page, the following words: “ We have all along desired peace, and will still most cheerfully embrace it, as soon as the unrighteous conditions which now obstruct it are removed. But if no alteration can be made in the terms, there is an end of all hope of [z] peace and concord.”

MR. Pierce here declares that the notions of the Presbyterians now, are the same with those of their predecessors in 1643: and indeed, if we were not sufficiently informed of it, by one who was so well acquainted with the general sentiments of their party, we might have reason to think so, from observing what pains have been lately taken by several of our chief dissenters, to write the lives, and celebrate the memories of some of the noted men in those times. Dr. Calamy has done this remarkably, in his abridgment of the life of Mr. Baxter, and in others of his works, in which he extols not only Mr. Baxter, but many more of the non-conformists, as so venerable for their piety and other good qualities, that they were men [a] of whom the world was not worthy. The like encomiums have been made upon Dr. Manton, who preached at Cromwell’s inauguration, and [b] recommended his highness to the blessing of God; upon Dr. Owen, who was a particular favourite of the protector’s; and upon divers other worthies of that age. And lately Mr. Neal has published a work to vindicate and adorn the characters of those more antient Puritans, who made the first

[z] This free declaration of our author puts me in mind of what was said by the excellent Grotius, about Mr. Calvin the great founder of the Presbyterian sect: “ Eum si sequimur, nulla pax erit nisi omnes in Genevensium dogmata, ritus, & rigorem transeant.” Rivet. Apol. Discuss. inter Grot. Oper. tom. iv. p. 739. If we follow Calvin, there will be no peace, unless all go over to the doctrines, the rites, and the stiffness of the people of Geneva.

[a] Calamy’s Def. of Mod. Non-conformity, part. ii. Lond. 1704. Preface, page 11.

[b] Whitlock’s Mem. p. 661.

disturbances in the church in the reign of Queen Elizabeth, and of those who continued them down from that time to the great rebellion [c].

Now what can with reason be concluded from all these proceedings, but that the dissenters of the present age have much the same principles and dispositions towards the church, with those their so greatly admired predecessors; and would, in a proper conjuncture of affairs, be likely to take the same measures against her? The only material and avowed change of principles, that I can find to have been among them, seems to be with regard to the toleration of those whom they think to be erroneous in religion: in that point, indeed, they no longer adhere to the rigid notions of the ancient sectaries. They have made some public and full declarations for general liberty of judgment and profession, for mutual forbearance and Christian benevolence. But are these declarations to be understood as importing security to the church of England in her present state, supposing that they had power sufficient to alter it? Not at all. Mr. Pierce [d] in his answer to Dean Sherlock, no longer ago than the year 1718, very frankly acquaints us, if we think so, we are much mistaken. The Dean, says he, asks, “Have any of the dissenters declared that they are for maintaining the church as by law established?” To which he answers, “It would be very strange if they should. Can they dislike so many things as they do in the church, and yet be against altering them?” From whence it is plain, that before this gentleman, and those of his mind, would be content that our establishment should be maintained, there are many things to be altered in it.

AND much to the like purpose, we have yet more lately the sentiments of another writer on the same side [e]; who, after he has observed, in decent expressions, “That the church of England hath al-

[c] In the 3d vol. of this history, which is carried on to the death of king Charles I. the author hath not scrupled to say that the royal army was little better than a company of banditti or public robbers. Perhaps, for want of pay, which that unfortunate prince was not able to give them, his troops might be sometimes put upon acts of violence, in order to subsist themselves: but, even admitting this, surely such titles were not fit to be given to an army commissioned by their king, and in which most of the chief families of England had some relations in service.

[d] Some reflections upon Dean Sherlock's Vindication of the corporation and test-acts, by James Pierce, Lond. 1718. p. 29.

[e] The Dispute better adjusted, about the proper Time of applying for a Repeal of the Corporation and Test-Acts. Lond. 1732. p. 17, 18.

“ ready devoured many a rich morsel; that surely it must be an unconscionable stomach that can be contented with nothing less than the whole; and that this may occasion a dangerous surfeit;” proceeds to assure us, “ That the dissenters are absolutely content, till her arms are opened a little wider, to leave her in possession of every emolument belonging to her as mother church.” It is certainly kind in the dissenters to leave the church, for any time at all, in quiet possession of what she has. But how much wider must her arms be opened in order to receive them? The measure of latitude necessary to this end, is not quite proper to be mentioned at present. The only farther explanation he gives of this point, is in p. 30, where, having told us, “ that the body of the dissenters are friends to an establishment, and would be so even to our establishment, provided our foundations were a little larger, and some proper alterations were made,” he adds, for our comfort, “ that these alterations would not in the least lessen the honour or revenues of the church, or render the establishment of it in the least more precarious or feeble.” From whence we may collect, that the temporalities of the church being to remain as they are, her doctrine, or her polity, or both, are to be affected by these alterations. Probably her articles must be reformed, and her methods of ordination, institution, and jurisdiction must be changed, to satisfy this author and his adherents. But has he the consciences of the dissenters at his disposal? does he know that all, or a majority, or any considerable part of them, will be satisfied with his scheme of alterations? Have the deputies from their several meetings entirely agreed among themselves what alterations they would have? I hardly believe they have gone so far yet, or will do it very soon. But suppose this was done; are the governors and members of the church of England to have no satisfaction given to them that these alterations are right to be made? Might not some of them be repugnant or disparaging to doctrines which they esteem very important truths? Might not others break in upon antient constitutions, which they think of apostolical, or divine authority, and therefore not to be given up to any demands? I believe there would be at least as many in this church, and among them persons of eminent character for piety and learning, who would take offence at such alterations, as there would be of the

dissenters well satisfied with them. And what then would the church be really the better for opening her arms to receive these new friends? or how would their admission conduce to the maintenance of harmony and peace among her members? One effect of it indeed would be, that a number of persons of this author's principles might get into the establishment, and partake of those honours and revenues for which they express so kind a concern. But would the establishment be ever the firmer, or ever the more useful to the state on this account? Let any one consider what was the case of the church established in 1641, when so many persons disaffected to her polity were within her arms. Did they not make use of their situation to distress their equals, and pull down their superiors? did they not presume to disturb and new-model the whole constitution of the church? and did not their attempts and success in this way produce a deplorable state of confusion? I shall hereafter have occasion to mention somewhat of this kind: in the mean time, I think, that, from what has been said, and the passages cited from dissenting writers of late, as well as of former times; we may justly conclude, that they are not disposed to suffer the establishment of our church to continue as it is; but would, if they had power, forthwith make a number of such alterations as they think proper. Which is in effect, the same as to say, that indeed they desire there should be an establishment with honours and revenues; but that these should be annexed to such doctrines, and such a polity only as they approve: and until this be done, they will never be quiet, but will always be endeavouring to bring it to pass.

WE might indeed, as I observed above, have had some reason to conclude this, if we only considered the general inclinations of mankind to promote and propagate their own opinions in religion, and to obtain as great a share as they can of secular advantages along with them: but when, to this ground of judgment, is added the experience we have had, in such a course of years, of the spirit and temper of the dissenters towards the church; and moreover, the signs they give even now of the continuance of the same dispositions, by celebrating the memories of their predecessors in the separation, and avowing most of their tenets; we have, I think, in these circumstances, as much evidence as can well be expected in a matter of this nature, and such as may justify

justify our acting, as there may be occasion, upon it. This then is the first thing I proposed to shew, to wit, That the body of the dissenters would desire the subversion of the present establishment of the church of England, if they had power to effect it.

THE second thing I advance, is, That by a capacity of public offices without any restraint, the dissenters in a short time would come to have so much power as would be sufficient at least to endanger this establishment, if not, in the end, to effect its subversion. And this will be likewise evident, if we consider the whole body of those dissenters, who, if any of them have a right to a capacity of offices without a religious test, must all be allowed to have the same right. Those who have been the most forward of late to put in their claim to this right, are the Presbyterians, Independants, and Anabaptists: but there are many others who may, with as much reason as these, expect to be considered and treated as good subjects of the state.

IN the first place, this may truly be affirmed of the Quakers. They have, for many years past, not only practised a quiet submission to the civil government, but have professed a true loyalty and affection to it. And there is the more reason to give credit to them in this point, because their interest is productive of these dispositions; and because the genius and manners of their sect, averse to every thing of military practice, do, in some measure, disable them to be dangerous, by open disturbance, to the public peace. This body of men, therefore, has a right, as good subjects, to all the same privileges as other Protestant dissenters; and particularly to a like unrestrained capacity of offices in the state.

ANOTHER considerable set of Protestants who differ from the church of England, are the Arians, Socinians, and others, by whatever name they be called, who are heterodox with regard to the sacred Trinity. The number of these is not a little increased of late years. Men are pleased to have all points of religion brought within the compass of their reason, and cannot easily digest those acknowledgments, which in the orthodox scheme are necessary to be made, of the weakness and defectiveness of human understanding: on which account it is not very improbable, but these Anti-trinitarians may in length of time gain numerous converts; and when they have done so, may resume the de-

sign they have formerly had of holding separate assemblies for divine worship; that they may not be obliged to join in forms which they think dishonourable to the one supreme God. But whatever the increase of their numbers may be, there is reason to think that they will be as quiet and well-affected subjects to the civil government as the other Protestant dissenters are. For none of their tenets are of such a nature as will incline them to dispute the rightfulness of the present civil settlement, or put them upon any attempts to disturb it. A man who believes that the eternal Father of all things cannot have any equal, and that therefore the word God is applied to the Son in a lower sense, may, notwithstanding this opinion, preserve a due loyalty to the king, and affection to his country: he may have charity for his neighbours, and be disposed to live in peace with them; in a word, he may perform all the social duties as well as another man who is right in his belief. Mr. Neal has declared himself as to this matter in very full terms. "An heretic, says he, or a non-conformist to the established religion, may be a most loyal and dutiful subject, and deserve the highest preferment his prince can bestow [f]." I cannot go so far as this author in his compliment to heretics; but I think it indeed evident that they may be as peaceable and even loyal subjects to a civil government, as the Presbyterians, or other Protestant dissenters: and therefore, upon the general principle which these latter make the ground of their claim, the Anti-trinitarians, even though they should openly profess themselves such, and separate from the church, yet ought to have an equally free capacity of offices in the state. The reader will see that what hath been said concerning these is to be applied to all sorts of christians, however erroneous they are in religion, provided they be well-affected to the state. And, perhaps, he may think that others, besides Christians, have also a right to be included in this application; in regard that it is both possible and likely that they may be good subjects to the civil government. Mr. Chandler has declared [g], "He does not apprehend that the profession of any particular religion, as it stands contradistinguished from the law of

[f] Hist. of the Puritans, vol. iii. p. 312.
 &c. Lond. 1727. Pref. p. 5.

[g] Reflections on the Conduct of Modern Deists,

“ nature, is, in the nature of things, necessary to the safety and good
 “ order of government, which may be supported by a due regard to
 “ the practice of the moral duties, and by a proper care in the civil
 “ magistrate to enforce the observation of them, in all who are subject
 “ to their authority and government; which will be sufficiently sup-
 “ ported by such a regard to moral duties, notwithstanding the greatest
 “ diversity of opinions in other things, even though the community
 “ should consist of some Deists, some Mahometans, and some Chris-
 “ tians.” In this passage, if I understand it rightly, the author’s
 meaning seems to be, that as persons of the religions here mentioned
 acknowledge the being and providence of God, with the moral obli-
 gations from thence incumbent upon mankind, they may, by the in-
 fluence of these principles upon them, be loyal subjects under any go-
 vernment that is rightly administered. Now if this be true, then, in
 pursuance of the general principle laid down by the dissenters, in be-
 half of all subjects well affected to the civil government, it must fol-
 low, that free-born Englishmen, although they should openly pro-
 fess themselves Deists, yet ought not to have their civil rights at all
 abridged on that account, by any test or other means, but ought to be
 allowed to be as freely capable as Christian subjects of offices in the
 state. Which doctrine, if it be good, will probably encourage a num-
 ber of persons to offer their service to the public, who cannot consci-
 entiously do it at present.

BUT supposing this capacity of offices should be restrained to Chris-
 tians only, yet, if we consider how numerous all the sectaries or here-
 tics professing this religion, are at present, or may be hereafter, they
 will appear to be a body justly formidable to the church of England.
 For though they differ among themselves in many respects, and might
 be ill enough inclined to each other, in case they were competitors for
 any advantage, yet, while there is nothing of that sort to set them at
 variance, they will probably agree in being enemies to the establish-
 ment of the church, and in endeavouring to weaken and subvert it:
 because in its subversion, they may all hope to find their several advan-
 tages in one way or another. If they cannot all expect to gain such
 an establishment for themselves as the church has at present, yet they
 may all hope to have some allowances from the state for their several
 teachers,

teachers, according to a scheme that is said to be formed by some of their friends: or, if this point should prove too hard to be gained, they may, at least, hope to be relieved from that unjust burthen, as the Quakers and many others account it, of paying to an established ministry, and may reasonably expect to increase very much their several sects, when there shall not be a regular body to oppose them. These, and other motives of the like nature, did, in fact, engage the different sectaries in 1641, to act in close concert and union together for demolishing the church of England. Not only the Presbyterians, who hoped to be established in the room of the church, but the Independents and the Anabaptists, the Enthusiasts who were for the fifth monarchy, and others of that turn, who knew not what they were for, yet all heartily agreed “in declaring before God with up-lifted
“ hands, that they would extirpate the episcopal government by arch-
“ bishops, bishops, deans, and chapters, and all the officers depen-
“ dant upon them;” which accordingly, by their joint assistance, was brought to pass.

THEN indeed, after a little time, these sects began to quarrel among themselves; and the Presbyterians who came nearest to obtain an establishment, most bitterly reproached the Independents, the Anabaptists, and other sectaries, with their schism, their ill principles, and their hypocrisy, as what produced insupportable disorders. Mr. Edwards, an eminent Presbyterian, made and published a collection of examples to this purpose, and added his own censure of the persons concerned, in the following terms: “there never was a more hypocritical, false,
“ dissembling, cunning generation in England, than many of the gran-
“ dees of our sectaries.—They encourage, protect, and cry up for
“ faints, sons of Belial, and the vilest of men.” Edwards’s *Gangræna*, part iii. p. 240 [h]. And again, p. 87. “Yea, says he, when for
“ their seditious, tumultuous, libellous, scoffing, wicked, lying, scan-
“ dalous reports, books, and practices, they have been questioned, there
“ is nothing in their mouths but persecution.” Mr. Neal has thought fit in his third vol. of the history of Puritans, p. 370, to speak slightly of this author, “and of our church writers, for reporting the state of

[h] London 1646.

“ religion in those times from his Writings.” Let us then have recourse to the noted Mr. Baxter, whom Mr. Neal often quotes, and with great approbation. “ Did we ever think, says Mr. Baxter [i], “ when we were reproached by the enemies as having our party composed of Anabaptists and Separatists, that so many of them would “ have proved so much worse?—Is it this that our eyes must behold instead of our so much desired and hoped for reformation? “ Oh, what heart is so hard in any true Christian’s breast, that doth “ not rend and relent to think of the doleful case of England! How “ many thousand professors of religion are quite ruined in their souls, “ and turned into monsters rather than saints!” And in the same book, p. 147. “ What shall I tell you, says he, of all those hide- “ ous pamphlets against ordinances, and for the mortality of the soul, “ and that the soul is God himself, and against the truth of the scripture, and downright familism, and libertinism, and Paganism!—I “ cannot but think how men cried out against Mr. Edwards his Gangræna, at first, as if he had spoken nothing but lies, and now they “ have justified it with a fearful overplus.” Such was the language of the Presbyterians concerning the sectaries of those times.

On the other hand, they were not wanting to reproach the Presbyterians with equal bitterness. The Independants say, “ The national “ covenant is a double-faced covenant, the greatest make-bate and “ snare, that ever the devil, and the clergy his agents, cast in among “ honest men in our age.” Edwards’s Gangr. part iii. p. 220. “ The “ Presbyterian government is anti-christian, lordly, tyrannical, cruel, a “ worse bondage than under prelates, a bondage under task-masters, as “ the Israelites in Egypt.” Gangr. part iii. p. 221. “ The assembly is “ anti-christian, Romish, bloody, the plagues and pests of the kingdom.” Gangr. part iii. p. 230. After so much discord, one would have hardly thought it possible for them to have united any more: but, upon the Restoration, all these differences were soon forgotten, and they acted amicably in concert again, to carry on their work of opposing the church of England: they do so at present, and while they have such an adversary before them, it is probable they always will.

[i] In his Plain Scripture-Proof of Infants Church-Membership, &c. p. 149, 4to. Lond. 1646.

AND these their united efforts against the church will be likely to have the greater success, in regard that the dissenters may gain such an interest in the corporate and other burghs, which send members to the parliament, as may give them a weight in the legislature, much more than in strict proportion to their numbers and their wealth. Both these indeed, according to their own accounts, are very considerable. A late writer [i] on their side says, "The number of the Protestant dissenters" (by whom he seems to mean only the dissenters of the threedenominations) "is at the lowest calculation much above 700,000, and their wealth in land, &c. amounts to near fifteen millions." I fancy this person used multiplying glasses in his computation of their strength: but whatever it be, it is undoubtedly a circumstance of great advantage, towards the exerting it with effect, which another of their writers has observed, and, I believe, with truth, to wit [k], "That the dissenters being for the most part engaged in the trade of the kingdom, both as merchants and manufacturers, must necessarily create a great dependence upon them." The same quantity of wealth engaged in trade, is, without all question, much more powerful than when vested in land; both because of the more frequent returns of it into the hands of the proprietors, and of the many opportunities it affords of setting people to work, assisting lower tradesmen with goods upon credit, and taking off their manufactures. On these accounts the dissenters have certainly a great advantage towards forming an interest in the boroughs, of which many consist chiefly of men in business, who may be easily laid under obligations by the means I have mentioned. To trade mostly with them, as the dissenters are known to do one with another, and to give them credit a good while in their dealings, may sometimes be equivalent to no small sum of ready money, and yet may be done with ease by those who have large sums always passing through their hands. They may therefore gain a number of persons in the magistracy or government of corporations, and by degrees may introduce their own friends into those posts. And it is well known, that by being in the government of corporations, by

[i] Answer to the Dispute adjusted, p. 19. Lond. 1732.

[k] Inquiry into the Propriety of applying to Parliament, p. 7. Lond. 1732.

having the disposal of their revenues, which in some of them are very considerable, by conferring their offices of trust and profit, with their other franchises and privileges, a very great interest may be formed towards getting members into parliament. This interest may be of no small weight, even in elections for some of the counties; but in many boroughs it is so powerful, that hardly any other natural interest of country gentlemen can pretend to equal it.

INDEED, it is well known how much the interest which the gentry had in the boroughs has been diminished within forty years past. By their having been under the constant burden of a heavy land-tax all the last war, their estates are greatly impaired and encumbered; so that they have not been able to spend so much money as has been necessary for elections against those, who paying little or nothing to the public, and getting vast estates by the funds, or by trade, have been in a condition to bear what expences they pleased, in order to be in parliament. But the case will be still worse if the dissenters shall be able to bring themselves into the government of corporations, and thereby turn all the power they derive from thence likewise against the gentry. In that case, how difficult will it be for the latter to procure themselves seats in the house of commons? And unless they do this, how hard will it be for them to succeed in their pretensions to any places of honour and profit? I believe, indeed, that the crown, and those of its ministers who understand its true interest, will always be disposed, if other things are equal, to favour the gentlemen of ancient families, whose brave ancestors have preserved the constitution. It is very hard they should, as in a course of years too many of them probably will, sink down into the dust, by the continual disadvantages under which they labour. To suffer this, as far as it can be hindered, would be wrong in policy, because the heads and other branches of ancient families, will have spirits agreeable to their generous blood, and if they be under perpetual pressures, the public at length must be very much incommoded by it. Whereas, if they be put into offices of trust and profit, they may from thence not only be made easier in their fortunes, but may most effectually serve the government, by the credit which an ancient and noble family reflects upon the post it fills. And they are in number much more than enow to afford a very copi-

ous choice of persons to serve the public in those posts that are fit for them. As on the other hand, for those places that are most proper for persons in the way of trade and business, there are also great numbers of reputable merchants, and others, of the church of England, entirely well-affected to the present settlement, out of whom the crown may be abundantly supplied with proper officers. I believe the ministers of state, by the numerous applications made to them on such accounts, know this to be true: which, by the way, proves that there is no want of the dissenters, nor any expediency of employing them on that account.

BUT whether it be expedient to employ them or not, will any one who knows the present state of things imagine that they will not get into places, if by the means above-mentioned they can get themselves into parliament? Let us only suppose a good number of them in the house of commons, and that they prove active, constantly attendant, well united, able speakers, and not uneasy in their private fortunes. What will they not think they have a right to claim? What may they not combine to gain? What may they not succeed in? Some persons who have been for the abolition of the test, have professed to think that it could have no other effect than to occasion the admission of the dissenters into offices of the inferior kind. I suppose they meant such offices as a writer for the dissenters [1] specifies, in saying, that “They are as willing and able as any to serve in the commissions of taxes, peace, and lieutenancy, in the bench of aldermen and assistants.” But this same writer is by no means contented with posts of this kind. He puts in his claim to a share of all, even the highest in the kingdom: for he adds [m], “that they are as willing to serve in the judicature, and offices of state, or in commands at sea or land.” And soon after, he intimates “that it would not be to the dishonour of the government, to have a dissenting general, or a dissenting statesman:” as to which, I doubt not but most of his friends are of his opinion. And will it be impossible they should gain such posts? Have we not had examples in our history, of men

[1] An Essay upon the Interest of England, in respect to Protestants dissenting from the established church. Lond. 1701, p. 19.

[m] P. 21.

of interest in parliament, who have raised themselves into offices of that kind, without any real favour from the crown? Was not this the case of [n] Mr. St. John, of lord Say, and of others in the reign of Charles the First? Was it not the case of the [o] earl of Shaftesbury in the reign of Charles the Second? And has it not been the case of many others since those times? And whenever the dissenters should obtain any of the chief posts, would not the interest and strength of their party be proportionably increased? Would not they be preferred to all the under-places of trust, profit, or influence, in the disposal of their principals? Would they not act with so much more dignity and weight? Would not the members, and especially the ministers, of the established church, be proportionably discountenanced and discouraged? And must not these circumstances undermine and cut away the ground of our church establishment?

It has been represented as absurd to apprehend that the establishment of the church of England should ever come to be subverted by the dissenters; because this must suppose them to gain the whole legislature, the king and the lords, as well as the commons. But the reader will hardly fail to reflect, that the very same thing which is now talked of, as so impracticable, has been actually done in this kingdom, not a hundred years ago; and done by the power of those dissenters, who, a short time before, had as little appearance of being able to prevail upon the whole legislature, as their successors have at present. The circumstances now in favour of the latter, are not indeed quite the same as they were then; but they are of great weight: and I believe it will be allowed that the house of commons at present, is not of less moment in the balance of the constitution, than it was at the time; nor are critical conjunctures in our national affairs less likely to happen when there is a pretender to the throne of these kingdoms; when France is much more formidable to us than it was at that time; and when, if but two lives should chance to fall, that crown would arrive to a degree of power, which hardly any thing in Europe would be capable of resisting. But even without taking this last case into our view, let any man of judgment but think on the posture our affairs may pos-

[n] Clarendon's History, vol. i. 8vo. p. 211.

[o] Temple's Mem. part iii.

ably be in, both abroad and at home, in the course of events for thirty or forty years to come. Let him suppose, that upon the repeal of the corporation and test-acts, the dissenters should gain either a majority, or even a party of considerable weight in the house of commons; and when we consider the gentlemen of North Britain, this will not appear to be very unlikely: let him suppose that the concurrence of this party may be necessary to grant supplies, when they are more than ordinarily wanted, in times of any public hazard or distress; that divers of those members who are for the church of England, may be unattentive or disunited, while the dissenting party is vigilant, active, and resolute in pushing any points to the disadvantage of the church. These were really the circumstances in 1641 [p]; they may possibly, and even not improbably, upon the repeal of the corporation and test-acts, be the same again: and supposing they should be, will any one say that the church established should be in no danger? I will leave this point without farther enlargement to the impartial reader, who, I doubt not, must clearly see that in such circumstances the establishment of the church would be made to shake to its very foundations; and without such extraordinary aid and support, from the crown, or the house of peers, as perhaps it will be difficult for either of them to give, must be borne upon, sink, and at length be overthrown.

Now would such a state of things be for the true interest of the nation? Would it be desirable either to have no establishment, or one of a Presbyterian or Independant form? A late writer [q], who stiled himself a member of the house of commons, has let us know it is his opinion, that from nature, or the reason of things, it is difficult to shew that the clergy have any right to be maintained by the laity; or at least he thinks it wrong [r] that any one should be obliged to support a parochial pastor, whom he never resorts to; which opinion visibly allows no right in the magistrate to provide, at the general charge of his subjects, for their general instruction, by persons whom he ap-

[p] In king Charles the First's time, lord Falkland was wont to say, "That they who hated the bishops, hated them worse than the devil; and that they who loved them, did not love them so well as their dinner." Clarend. Hist. book liii. p. 276.

[q] Animadversions on a reverend Prelate's Remarks on the Tythe Bill. Lond. 1731, p. 12, 13.

points; or in other words, represents it as unjust to make a public establishment of any religion. But this gentleman has the misfortune to differ from the wisest and best men in every age and country of the world, of whose sentiments and practice we have any account. By seriously considering the general state and dispositions of mankind, they found a necessity of having a competent number of persons, in every nation, peculiarly appointed for the study and administrations of religion; that so they might be fit to inculcate it on others, and preserve an influence on the minds of the people, that might answer the ends of civil government. One might easily shew with what care and regard such institutions were made, and kept up, in all the most celebrated nations of antiquity; and how much they contributed to the public welfare. But I will not spend time in doing this; because the expediency, and even necessity of such establishments of religion, is a thing so evident in itself, to those who know mankind, that it has been confessed by several politicians, who were certainly not prejudiced in favour of the clergy of our own, or of any other country. Mr. Harrington [s], Mr. Nevil [t], and even Oliver Cromwell [u], declared their opinions, that there ought to be in every state a national church, or a public leading in religion.

AND if there must be some establishment of religion, it is as certain that one in the episcopal way is both more agreeable to the practice of the primitive Christian church, and more suitable to the civil constitution of this realm, than any Presbyterian model could be.

OF the former of these points one may be easily satisfied, by consulting the writings of the fathers, and others, in the three first centuries after our Saviour. In some of these, written soon after the beginning of the second age, and in others that followed them all along downwards, there are passages very express to shew that they believed the order of bishops, as superior to that of presbyters, to have been instituted by the apostles themselves, and that accordingly they laid a great stress upon it. The epistles of St. Ignatius, in particular, have

[s] See a Letter on Enthusiasm. Characteristicks, vol. i. p. 17.

[t] Plato Redivivus, &c. Lond. 1681, p. 184.

[u] Burnet's Hist. of his own Times, vol. i. p. 64.

been often quoted to this purpose, and proved to be genuine, with a force of evidence which our dissenters are unwilling to admit, but unable to contest with any shew of reason. These gentlemen indeed have affected to slight the authority of the fathers, in this point and others. One of their chiefs [w], not very long ago, went so far as to say, that “ We are properly the fathers, who stand on their shoulders, and have “ the advantage of seeing farther in several respects than they did.” But men of judgment and impartiality, will hardly allow that Dr. Manton, and his friends the dissenting divines, do quite so well deserve the title of fathers, as those venerable persons in antiquity, of whom some were acquainted with the apostles themselves, others lived in an age immediately following; all passed their lives in great dangers or hardships for the sake of their religion, and several attested its truth with their blood. It is not conceivable that in a matter of fact, so plain and public in its nature, and which so many persons might be interested to examine, as that of church-government, the immediate, or very near successors of the apostles, should be so deceived, as not to know whether episcopacy was of apostolical institution, and of great importance to be retained in the church, or not. And if they could not but be sufficiently informed in this point, it is yet less conceivable that those who laid down their lives for the Christian cause should be willing to impose upon posterity in a matter so important, in which if they did not say the truth so many persons living when their works were published must have been able to contradict them. Had we no other grounds but these, for our adherence to episcopacy as of apostolical institution, they would be sufficient.

BUT even from the holy Scriptures themselves there are no small proofs to be drawn for this same point. In the epistles of St. Paul to Timothy and Titus directions are given them with reference to their ordaining persons for the service of the church, and correcting them by admonition or other censures, as occasions might require. From the nature of which powers we may plainly see, that the persons who were invested with them were not upon the foot of common presbyters, and much less upon that of our church-wardens and vestry-men,

[w] Memoirs of Dr. Manton, by William Harris. Lond. 1725. p. 68.

as the author of the [x] Independent Whig has, with scorn, represented Titus to have been; but that they were of an order, to which those who were under their jurisdiction could not then pretend to be, though otherwise they were commissioned to the general administrations of the gospel. The dissenters alledge, that the title of bishop is applied in the Scripture to such persons as we call mere presbyters now; and we grant that That word was then used in a larger sense than it is at present. But ought any one to conclude that therefore all those persons to whom that word was applied must needs have been equal in every respect? The same word Baron is now applied to burgessees of the cinque-ports, to judges in the exchequer, and to peers of the realm; and must we therefore conclude that these are all equal in rank and dignity? If not, why should we think that all persons to whom the word Bishop is applied in Scripture must have been so equal? And yet this is the main argument alledged by the dissenters for it; when on the other hand there are visible marks of a superiority of order and power, both in Timothy and Titus, and the angels of the churches in the Revelation [y], over all the members of their respective churches.

It is a vain evasion which is used by the dissenters, in saying that Timothy, Titus, and others, were church-officers of an extraordinary kind, which was not designed to be continued in the church: for of this no proof can be drawn from the holy Scriptures; and on the contrary, we find that the ancient writers speak of them as of bishops of the like order and power with those who succeeded them in the same sees; and they were evidently of the same kind with the bishops in the other parts of the church, who were then universally allowed to be superior to presbyters; and of whom, in that quality, says Gro-

[x] Numb. i. vol. ii. p. 426. "In the epistle to Titus, who it seems was another bishop, he is directed to set in order the things that were wanting; (the business among us, of church-wardens and vestry-men.)"

After shewing this contempt of a person ordained to the high standing office in the church by the apostles themselves, it is no wonder that the same author gives such usage as he does to the modern clergy.

But in another place, indeed, he makes no scruple of treating the generality of mankind with as much disrespect as he does the clergy. Vol. i. p. 155, he says, "that by conversing with mankind, he had found that they generally consist of two sorts, learned parrots, and unlearned parrots: to the first whereof, absurdity is the peculiar privilege; and to the latter, ignorance." Such a mixture of humility and good-manners is not easily to be matched.

[y] REV. chap. ii. and iii.

tius [z], “ we have catalogues of Irenæus, Eusebius, Socrates, Theodoret, and others. Now not to give credit to such great authors, “ in a matter of history, one must have an irreverent and obstinate “ mind.” Accordingly, that very excellent person, whose candour and judgment were equal to his learning, would have persuaded the Remonstrants in Holland, about the year 1645 [a], “ to appoint some “ bishops among them, and that these should receive the laying on of “ hands from the Irish archbishop, who was there at that time, and “ that when they were so ordained they should afterwards ordain “ other pastors.” From whence it appears, what the sentiments [b] of Grotius were, about the expediency at least, of having in that church a regular successive ordination, through the hands of bishops.

THE like or greater concern about it, we find in those pious confessors of Christ, the Protestants of Bohemia [c], who were apprehensive that ordinations in which Presbyters, and not a bishop, should create another Presbyter, would not be lawful, and were in doubt how they should be able to maintain such an ordination, either to others, when they opposed, or to their own people, when they questioned it; and therefore they sent deputies to the remains of the ancient Wal-

[z] De Imperio Summarum Potestatum circa Sacra. Opera tom. iv. p. 272. “ Aërii sanè hic error ab “ omni ecclesiâ damnatus est, quod diceret Presbyterum ab Episcopo nulla differentia discerni debere. Ipse “ Hieronymus ei qui scripserat, nihil interest inter Episcopum & Presbyterum, respondit, Hoc satis imperite; in portu, ut dicitur, naufragium.—Tertium hoc sit, Episcopatum initium habuisse apostolicis temporibus. Testantur hoc catalogi Episcoporum, apud Irenæum, Eusebium, Socratem, Theodoretum, atque alios, qui omnes incipiunt ab apostolicâ ætate. Tantis autem auctoribus fidem derogare, in re historica, non est nisi irreverentis & pertinacis animi.”

[a] See the testimonies concerning Hugo Grotius in Le Clerc's edition of Grotius on the Christian Religion, translated by Dr. John Clarke, p. 331.

[b] Mr. Samuel Chandler, in his second treatise on the Notes of the Church, p. 38. has been pleased to affirm, that “ the mission of bishops and prelates is in itself a trifling circumstance of little or no importance.” But one might shew that the ancient writers of the church, whose judgment in this point may surely weigh against Mr. Chandler's, express themselves very differently about it. I beg leave to recommend to this gentleman's consideration the following passage of St. Cyprian, whose abilities no one ever questioned, and whose integrity was approved by his laying down his life for the sake of the gospel.—Having observed in his 33d epistle (edit. Oxon.) that our blessed Saviour in making the settlement of his church, said to Peter—Upon this rock I will build my church, &c. he goes on thus, “ Inde per “ temporum & successionum vices, episcoporum ordinatio & ecclesiæ ratio decurrit; ut ecclesia super episcopos constituatur, & omnis actus ecclesiæ per eosdem præpositos gubernetur. Cum hoc itaque Divina “ Lege fundatum sit, miror quosdam, audaci temeritate, sic mihi scribere voluisse.”—

[c] Commenius in Frat. Bohem. Histor. sect. 59. in Durel of the Government of the Reformed Churches, &c. p. 12, 13.

denser, upon the confines of Moravia and Austria, by whose bishops these deputies were consecrated to the episcopal office, which they have ever since transmitted to their successors.

AND if some other foreign churches do not go so far as this, but are willing to defend the validity of their own Presbyterian ordinations, they, however, in doing it, lay no small stress upon the necessity they were under of taking this course, when they first made the reformation, “I think,” says Mr. Du Bosc [d], an eminent Protestant divine in France, in the year 1660, “that not any of my brethren
“ will condemn me, if I say, that well-ordered episcopacy hath most
“ important and considerable utilities, which cannot be found in the
“ Presbyterian discipline. If we have followed the last, it is not for
“ any aversion we have against the former:—but it is because neces-
“ sity hath obliged us to it; because reformation having been begun
“ in this kingdom by the people, and by the inferior churchmen, the
“ places of bishops remained filled with men of a contrary religion,
“ so that we were constrained to content ourselves with ministers and
“ elders as well as we could.—If bishops had embraced the refor-
“ mation at first, I make no doubt but that their order had been
“ maintained in the ecclesiastical polity.” Mr. Le Moyne [e], another Protestant divine in France, says, “Truly, I believe not, that it is im-
“ possible to keep either peace or order in your church (of England)
“ without preserving the episcopal dignity. And I confess, that I con-
“ ceive not by what spirit they are led that oppose that government,
“ and cry it done with such violence.” This same person having ob-
served [f], “that the bishops had been concerned in the reforma-
“ tion in England, and that in our churches there were lectures and
“ praises of the pure truth, adds, that this ought to oblige all good
“ men not to separate from it, but to look upon the church of Eng-
“ land as a very orthodox church: thus all the Protestants of France
“ do; those at Geneva, those of Switzerland and Germany, and those
“ of Holland too; for they did themselves a very great honour, in

[d] This translation was made from the French original, by Dr. Peter du Moulin, and is to be seen in Durel's Government of Foreign Churches, p. 122.

[e] Durel of the Government of the Reformed Churches, p. 127.

[f] Durel, p. 127.

“ having some divines of England in their synod of Dort, and shewed
 “ plainly that they had a profound veneration for the church of Eng-
 “ land. And from whence does it then come, that some Englishmen
 “ themselves, have so ill an opinion of her at present, and divide rashly
 “ from her, as they do? Is not this to divide from all the ancient
 “ churches, from all the churches of the east, from all the Protestant
 “ churches, which have always had a great respect for the purity of
 “ the church of England [g]?” And to the same effect, Mr. de
 l’Angle, another Protestant divine of note in France, has declared his
 sentiments [h]. “ Since the church of England, says he, is a true
 “ church of our Lord, since her worship and doctrines are pure, and
 “ having nothing in them contrary to the word of God; and since
 “ that when the Reformation was there received, it was received to-
 “ gether with episcopacy, and with the establishment of the liturgy
 “ and ceremonies which are there in use to this day; it is without
 “ doubt the duty of all the reformed of your realm, to keep themselves
 “ inseparably united to the church. And those that do not this,
 “ upon pretence that they should desire more simplicity in the cere-
 “ monies, and less of inequality among the ministers, do certainly
 “ commit a very great sin: for schism is the most formidable evil that
 “ can befall the church.” The authorities that have been here al-
 ledged will, I hope, be of weight towards supporting my assertion,
 that the government of a church in the episcopal way is agreeable to
 the practice of the primitive Christians, and to the institution of the apos-
 tles themselves, whereas one in the Presbyterian way would not be so:
 and therefore an establishment in the former way ought to be preferred.

BUT this is not the only advantage that our present establishment
 has. It is, farther, the most suitable to the nature of our civil consti-
 tution. In this point we have the judgments of some of the ablest
 statesmen that we have ever had in England. “ For the government
 “ of bishops,” says the famous lord Bacon [i], “ for my part, not pre-
 “ judging the proceedings of other churches, I do hold it to be war-

[g] In bishop Stillingfleet’s *Unreasonableness of Separation*, p. 497.

[h] In the same place, p. 421.

[i] *Considerations towards the better Pacification and Edification of the Church of England*, in the 4th
 vol. of his works, folio, edit. Lond. 1739, p. 436.

“ wanted by the word of God, and by the practice of the ancient
 “ church in better times, and much more convenient for kingdoms,
 “ than a parity of ministers, and government by synods.” And again
 in the same tract, “ It is not possible, says he, in respect of the great
 “ sympathy between the state civil and the state ecclesiastical, to make
 “ so much alteration in the church, but that it would have a peril-
 “ ous operation on the kingdom.” This great man does not clearly
 express the reasons why he thought a Presbyterian government in the
 church less convenient and suitable to the civil state than an episcopal
 one. But Sir Francis Walsingham speaks more plainly in his noted
 letter to Mr. Critoy. He observes, “ that the Puritans, in their con-
 “ sistory and presbytery, opened to the people such a way to the go-
 “ vernment, as was no less prejudicial to the liberty of private per-
 “ sons, than to the sovereignty of the prince.”

AND this was indeed more fully declared as the sense of Queen Eli-
 zabeth, by Sir John Puckering, who was afterwards lord-keeper of
 the great seal, in a speech, by him made, in the house of peers, in the
 28th year of her reign, of which the following passage is a part [k].
 “ You are especially commanded by her majesty, says he, that no ear
 “ be given, or time afforded, to the wearisome solicitations of those
 “ that be called Puritans, wherewith all the late parliaments have
 “ been exceedingly importuned: which sort of persons, while that in
 “ the giddiness of their spirits they labour and strive to advance a new
 “ eldership, they do but hurt the repose of the church and common-
 “ wealth, which is as well grounded for the body of religion itself,
 “ and as well guided for the discipline, as any realm that confesseth
 “ the truth. And the same thing is made good to the world by many
 “ of the writings of godly and learned men, neither answered nor
 “ answerable by these new-fangled refiners. These men do both
 “ teach and publish in their printed books, and teach in their con-
 “ venticles, sundry opinions, not only dangerous to a well-settled estate,
 “ and the policy of the realm, by putting a pike between the clergy
 “ and the laity, but also much derogatory to her sacred majesty and

[k] See a Short View of the late Troubles in England, in the Reign of King Charles I. Oxford, 1681.
 folio, p. 13.

“ her crown ; as well as by the dimunition of her ancient and lawful
 “ revenues, as by denying her highness's prerogative and supremacy,
 “ and by offering peril to her majesty's safety in her own kingdoms”.
 We see here what were the sentiments of that wise Queen and her
 counsel, who will be allowed, I think, to have understood at least the
 civil interests of this kingdom.

AND much to the same purpose we have the judgments of several
 foreigners, of eminent character, especially for their skill in political
 affairs. I will lay no great stress upon Mr. de Montmorency, constable
 of France [1], who said, “ that if the Calvinists in that kingdom
 “ should at length obtain the liberty they pretended to, the monarchy
 “ would degenerate into a democracy.” For as this minister was a
 papist, his sentiments may on that account have the less weight. But
 the same objection does not lie against Philip de Mornay : that learned
 nobleman was not only a Calvinist, but a principal support of their
 party in France. And yet he could not but acknowledge [m], “ that
 “ though the Presbyterian government might do well enough in po-
 “ pular states, such as Geneva and Switzerland, yet, in kingdoms or
 “ monarchies, episcopal government was rather to be chosen.” And
 the same opinion in much stronger terms, and with a particular view
 to England, was professed by another foreigner, who understood poli-
 ticks as well as most men of his time, and was both a good Protestant,
 and had great candour in matters of religion ; I mean the celebrated
 Pufendorf, who expresses himself in the following words [n] : “ In
 “ this respect likewise not a little blemish is thought to lie upon many

[1] Varillas Histoire de Charles IX. p. 41. Si les Calvinistes obtenoient en fin la liberté qu'ils preten-
 doient, la monarchie degeneroit du moins en democratie.

[m] See Dr. Du Moulin's preface to his father's book concerning the novelty of popery.

[n] Dissert. Academ. Lond. Scan. 1675. p. 580.

Hac quoque parte non parum labis adhærere multis Calvinianorum judicatur, dum in democratiâ ni-
 mio amore propendent, & contrâ, monarchias averfantur ad easque convellendas sunt proclives. Ejus rei
 causa quidem peritis non obscura est : qui enim per Galliam, Helvetiam, atque Belgium, simul cum
 pontificiâ religione, auctoritatem pontificiorum episcoporum ejuraverant, cum novam ecclesiæ admini-
 strationem instituerant, in democraticam regiminis formam consenserunt ; in quâ & ministri omnes inter se
 essent æquales, & ad conventus ecclesiasticos seniores quoque & diaconi è plebe adsciscerentur. Cum autem
 semel in rebus sacris plebs ad suffragium admitteretur, proximum fuit ut crederent iniquum esse totam
 civitatem Unius Hominis voluntate regi. — Judicant prudentes ad turbas istas, quæ superioribus annis
 Angliam miserrimè exercuerunt, non parum contulisse dogmata Genevensia, quæ juvenus Anglicana
 ibidem studiis operata aut ex eorum scriptis hauserat & in patriam suam disseminaverat, &c.

“ of the Calvinists, as being too much inclined to affect democracies,
 “ and being on the contrary averse to monarchies, and forward to
 “ subvert them. The cause of which is well understood by men of
 “ skill: for those persons in France, in Switzerland, and in the United
 “ Provinces, who, in discarding Popery, did at the same time throw
 “ off the authority of the Popish bishops, when they settled a new form
 “ of government in their church, agreed upon one of a democratical
 “ kind, in which all the ministers were upon an equal foot, and for
 “ the management of their church affairs, had elders and deacons
 “ joined with them from amongst the people. Now when they were
 “ once admitted to a vote in ecclesiastical matters, the next step was
 “ for them to have a notion that it was unjust that a whole state should
 “ be governed at the will of one single person. Men of prudence judge
 “ that those troubles, with which England was some years ago most
 “ miserably afflicted, were not a little fomented by the Geneva doc-
 “ trines, which the English youth that studied in that place, either
 “ learned there, or out of the writings that came from thence, and
 “ dispersed those notions into their own country.”

IN this last quotation, when Pufendorf says that the Calvinists are too much inclined to democracies, he is not to be understood as if he represented all of that sect as being at all times thus disposed: for no doubt, while the kings under whom they live encourage and favour them, they may so long be well enough pleased with their government, and willing to support it. The baron's meaning I take to have been, that the popular forms of their church-government, have a natural tendency to raise dispositions, which, when either they are soured by unfavourable treatment, or not enough sweetened by personal interest under monarchies, are apt to lean much towards popular schemes. And of this tendency, indeed, among the Independents and other sectaries, the Presbyterians themselves in 1645, appear to have been sensible: for the London clergy, in a letter written by them in that year from Sion-College, to the assembly of divines at Westminster, say, “ It is much to be doubted, lest the power of the magistrate
 “ should not only be weakened, but utterly overthrown, considering
 “ the principles and practices of the Independents, together with
 “ their compliance with other sects, sufficiently known to be

“anti-magistratical.” But might not the Independents have retorted this charge upon the Presbyterians, not only by putting them in mind of the part they had acted against the crown for several years past, but also by quoting the declared sentiments of their great leader Mr. Cartwright, who says [o], “that the world is now deceived, that think-
 “eth that the church must be framed according to the common-
 “wealth, and the church-government according to the civil govern-
 “ment; which is as much as to say, that a man should fashion his
 “house according to his hangings: whereas indeed it is clean con-
 “trary, that as the hangings are made fit for the house, so the com-
 “monwealth must be made to agree with the church, and the go-
 “vernment thereof with her government—Otherwise God is made
 “to give place to men.”—Mr. Neal acknowledges [p], that the Puritans did not allow the church to be monarchical. If therefore the government of the state must (by divine right, as it seems) be suited to that of the church, the conclusion is evident, that the government of the state ought not to be monarchical. From this, and other considerations, which the passages that I have produced may suggest, the reader, I trust, will be apprized that an establishment of a Presbyterian form would but ill agree with our civil constitution: and from thence he will be farther led to see, that in views of policy, it would not be expedient that the vehement part of our dissenters should be admitted to a full capacity of offices, even supposing their admission could, at first, be gained with tranquillity and safety: because their principles and dispositions would be thereby encouraged and spread; though not quite so much indeed as by an establishment, yet certainly more than would be desirable in the present circumstances of our nation.

BUT I must farther observe, as the point upon which this question chiefly turns, that such an admission of all dissenters to a free capacity of offices, by an abolition of the test, will not be likely, in the present state of things, to be made, or at least not long followed, with such tranquillity as some persons may imagine: on the contrary, it will be naturally productive of such animosities, contests, and disorders, as will be very dangerous to the welfare of the nation. How

[o] Defence of the Admonition, p. 121.

[p] Hist. Pur. vol. i. p. 133.

much soever the dissenting interest may increase by the means above-mentioned, yet it will not easily come to be equal to that of the church. The members of the latter will, for many years, be as they are at present, much above the sectaries in number, as well as in quality and estates. It is true, indeed, that all these nominal church-men are not to be relied upon for the support of the establishment: because infidelity has for some years past exceedingly increased, and, in consequence of it, a regard for the instituted parts of religion, and for the hierarchy in particular, is very much lessened in the minds of many: the numerous libels published of late, have had, in some measure, the effect that was designed, of making men ill church-men, by making them regardless of several doctrines of importance in religion. A late writer [q] on the side of the dissenters, takes notice of this state of things, and does it in a very remarkable way. "The prevailing opinion of England," says he, "is Latitudinarian; and most men in the kingdom are so far improved in their judgments, as to believe that heaven is not entailed upon any particular opinions in religion, so as to sacrifice their liberties in defence of them." And another writer on the same side [r], after letting us know, "that the friends of the dissenters are seldom found among ministers of state, adds, that they are to be found among such gentlemen, as have unto good parts and knowledge, joined a freedom of thought and free enquiry into matters of religion." We are very sensible how far such freedom and latitude of thought are often carried in the present age: and can give some reasons why several of the great proficient in that way either are, or would seem to be, friends to the dissenters; but still we trust that a disregard to the principles of religion has neither yet made, nor will ever make, so great a progress as some persons think. We doubt not but much the greater part of the people of England will continue to believe in Jesus Christ: and that most of them, from a well-grounded persuasion that episcopacy was of apostolical institution, will preserve a suitable veneration for it: so that though they may be prejudiced against some particular prelates amongst us, yet they will not bear to

[q] Letter to Mr. Holden, Lond. 1733, p. 26.

[r] The Interest of the Protestant Dissenters considered. Lond. 1732. 2d. edit. p. 18.

see the order itself set at nought, and thrown out, to make way for the schemes of innovating spirits in modern times. They will rather think that the same order which at first propagated and settled Christianity in the world, will be the best bulwark against Infidelity and Popery at present.

AND even if this point should not be considered so much as it ought to be in views of religion, yet most of the considerable families in England will, in all probability, be for supporting our church-establishment, as the most agreeable to our civil constitution. Their own interest, joined with that of the public, will induce them to it. Whatever dispositions there may have been formerly in some of our noble and ancient families to support and encourage the dissenting party; there are few, I believe, at present, who are not sensible that the state of things is so much altered, as to require a suitable alteration in their conduct. For they see that the dissenters, very far from being under such hardships as they were in some parts of the reign of Charles II. have now all the liberty that can be desired in respect to promoting their spiritual welfare. Their profession and exercise of their religion are free and secure: they educate their children as they think fit; their teachers settle themselves where they will; and assemble together as often as they please, with all the proper synodical forms to consult and act as they find expedient. So that their case is no longer a matter of compassion. Their views at present are turned to the obtaining of power and influence, and the making themselves of weight in the state. But this increase of their secular interest has much less appearance of being for the service of the civil constitution, than it had for some years after the Restoration: for then the humour of a great part of the nation ran strongly to exalt the prerogative of the crown, perhaps more than was really for the interest of the public. On which account some patriots of that time thought it right to promote the dissenting interest, as what would be a proper check and ballance against the immoderate growth of the prerogative. But at present those gentlemen, who know the true state and interest of their country, are sensible that there is no occasion for this method. There are other circumstances in the nation sufficient and more than sufficient to weigh against the crown. In particular, they see that the royal prerogative

is circumscribed and fixed by law, so that none of those stretches that were formerly made of it on some occasions can now have any place: that the supplies which are requisite for the maintenance of the forces by sea and land depend upon annual grants by the parliament: and that even the revenues for the civil list expire upon each demise of the crown: so that if at any time when they are to be regranted, the commons should be disposed, as they were for some time after the Revolution [s], or should be wrought up to be yet more jealous of their liberties, and willing to increase them, those revenues might, in that case, be clogged with such conditions as would make the power of the crown precarious: while, on the other hand, that of the people stands on a sure bottom, and must constantly increase; because the [t] property, the source of power, is vastly on their side against the crown, even though the nobility be added to it; and must come to be more so in length of time. All gentlemen of sense must be aware of the consequences which such a state of things will naturally produce: and, as one of its effects already wrought, they see that the spirit of liberty runs with so strong a course through the mass of the people, that unless some very wise measures be taken, and constantly pursued to keep it in bounds, it must by degrees undermine and impair both the aristocratical and regal parts of our constitution. They know that these two parts, including in the former the landed gentry, have a natural connection of interest with each other: that the clergy in such an establishment as ours, will be always in some degree dependant upon them; and both from that dependance, and from the manner of their education, will be disposed, as far as they are able to act for their support, and for preserving the true ballance of our constitution: so that any advantages possessed by the clergy, that are not of disservice to

[s] See Burnet's History of his own Times, vol. ii. p. 42, 43.

[t] Mr. Moyle, in his essay on the Roman Government, vol. i. p. 73. says, "That land is the true centre of power: and that the ballance of dominion changes with the ballance of property. This, adds he, is an eternal truth, confirmed by the experience of all ages and governments, and so fully demonstrated by the great Harrington in his Oceana, that it is as difficult to find out new arguments for it, as it is to resist the cogency of the old."

Mr. Nevil, in Plato Redivivus, p. 141. affirms, "that the natural part of our government, which is power, is by the means of property in the hands of the people:" which circumstance he said before, p. 37, "has made this country scarce governable by a monarchy."

their spiritual function, or the public good, are really so much strength to the gentry, the nobility, and the crown itself. And therefore if these should make any unnecessary breaches on the clergy, they would in effect cut through a bank, which the wisdom of their ancestors has raised for their defence, against that weight of the people, which the scripture compares to the many waters.

UPON these motives, therefore, of interest or of conscience, or of both together, there is not much doubt but that the far greater part of the considerable families will be for supporting the establishment of the church. And great numbers of the middle and lower people have so inbred a veneration for that church in which they have been baptized and brought up, and for that regal government under which this nation has so long flourished, and is at present so happy; that they will not easily be wrought off from their adherence to them. So that if, on the one hand, the several sects of the dissenters joined with the men of latitude, and freedom of thought, and with those who are averse or very indifferent to a regal government, do make an appearance of great force against the church of England; there will not be wanting on the other side, a body of friends, united by principles of conscience, and by a regard to the true interest of their country, joined with their own, to act together as occasions may require, for the support of this establishment.

Now in these dispositions of the nation, I think, they who know mankind, will hardly avoid foreseeing, that, in case the test-act be repealed, there must great animosities and contests ensue: for the dissenters will, in all appearance, presently apply themselves to gain an interest in the corporate boroughs and other towns, to be chosen into the government of them, to be put into the commissions of peace and lieutenancy, and all other posts of trust, profit, or influence that may be within their reach: and probably by supporting one another in their applications for these places, or enforcing it by the joint weight of their whole body when it is necessary, they must often succeed in their pretensions. For we may judge what their manner of applying will be, from what has been already said by one who writes with an air of importance among them, and hath thought fit to give the world the history of their consultations and proceedings, in order to procure the abolition

abolition of the test [u]. This gentleman having intimated that the application of the dissenters in Ireland for the repeal of the test-act there, ought to have been enforced with the whole weight of the dissenters in England; and having complained that that affair which had been promised by a very great man, as an earnest of future favours to the dissenters in England, had shamefully miscarried; expresses his resentment in the following terms: “are the dissenters, says he, to be thus treated, in the face of an election?”

—*Manifesta Fides, Danaümque patefcunt*

Insidiæ.—

Virg. lib. ii. 309.

The reader will easily understand who is here accused of breach of faith, and who are reckoned insidious enemies to the dissenters: he will perceive, by the favours said to be promised in the plural number, that the bare repeal of these acts in question will hardly content them; and he will observe what their manner of application will be, to gain any advantages they think themselves entitled to: whenever their assistance is wanted by the crown, they will expect to be proportionably considered.

AND will dispositions or attempts of this kind, on the part of the dissenters to enlarge their interest and power, raise no concern at all in the members of the church of England? Will these be in no degree solicitous to maintain their ground? Will the members of the boroughs and other corporations be contented that dissenting ministers [w] at London, should direct them in the choice of the members of their bodies, and their representatives in parliament? Will the ancient gentry, whose families have always had a natural interest in the boroughs, be easy in seeing it undermined, and in a way of being reduced to little or nothing? Will they negligently suffer a new set of people to come in upon them, and cross their pretensions to every post

[u] An Impartial Account of the late Transactions of the Dissenters. Lond. 1734, p. 25, 26.

[w] “There is a minister in London to whom the town of Berwick has, upon every new choice, applied for his direction or assistance, above one-and-twenty years, and without whose influence the present members had never been so much as named amongst them,” Remarks upon a paper, intituled, A Letter to Protestant Dissenters. Lond. 1732, p. 17.

of trust and profit? Will they be easy in seeing that church which their ancestors have endowed and protected, which all the foreign churches so greatly respect, and which the arguments of the dissenters have been unable to hurt, borne down by the growth of their secular interest? Will they not endeavour to form opposite interests [x], and take proper methods to prevent these inroads? And must not these measures produce animosities, violent enmities, and their dire effects? May they not give opportunities, which persons, disaffected to the government, will improve to its disadvantage? May no foreign enemies find their account in them? I think, any one who knows mankind, and the present state of our parties and dispositions in England, must see that these consequences would be likely to follow upon a repeal of the test-act. Clouds much less than these appear to be in prospect, have sometimes bred storms which have torn up governments by the roots.

Now if these be the natural effects of such an alteration; if there be just reason to believe that it will produce confusion and danger, or great disadvantage to the state; then the vehement dissenters, from whom this danger is likely to arise, may justly be excluded by any fit means, from having offices that will give them too much power and influence in the state: for whatever rights or advantages any one may be entitled to as a good subject of the civil government, they must all be submitted to considerations of the public welfare. Whenever this requires it should be done, they may justly be abridged, in any degree which is necessary to it. For unless such a course was taken, it would be impossible in many cases for civil societies to subsist: and therefore acquiescence in this point is always a condition upon which men are members of such societies. Upon this ground was made that act of parliament 8 Henry VI. chap. 7. which appointed the qualifications of those who should have a right to vote in the elections of knights of the shires. By this act that right is allowed only to such persons as are possessed of 40s. a year of freehold lands or tenements; whereas

[x] "Can any one think that the bigotted and self-interested clergy, who, like harpies, are watching all opportunities, will not seize the occasion to trumpet their seditious alarms, and endeavour again to spread false notions of the church's danger? Reflections on the Corporation and Test-Acts." Lond. 1732, p. 23.

before that time [y], all the freemen of the county had a right to vote in that case. But because, as the preamble to the act expresses it, “the late elections had been made by very great, outrageous, and “excessive numbers of people dwelling within the same counties of “the realm of England, of the which most part was of people of “small substance, and of no value, whereof every of them pretended “a voice equivalent, as to such elections to be made, with the most “worthy knights and esquires dwelling within the same counties; “whereby man-slaughters, riots, batteries, and divisions among gentlemen, and others of the said counties, shall and may likely rise “and be, unless convenient remedy be had and provided in that behalf.” Therefore the said qualification is fixed: that is to say, in order to guard against a mere probability of some danger to come, the right of voting was at once taken away from the far greater part of the people of England.

SOME writers have been willing to account for the justice of this act, from the consideration that men under 40 s. *per ann.* having as it were no property in land, ought not therefore to have any vote for one to appear in parliament on their behalf. But this circumstance is plainly insufficient to account for the equity of this procedure. For such persons may sometimes have a very large property in copyhold and leasehold lands, in monies, in stocks of goods, and the like. At least they had the liberties of their persons, and other rights, as free-born Englishmen; which are certainly things of value, and may be affected by what is done in the parliament: and therefore in regard to these, they might justly claim a vote in the choice of their representatives. No other principle will account for their being deprived of this right, but only the above-mentioned consideration of the public danger by their having it. Upon a foundation of the same nature was made another law in the reign of Queen Anne [z], which limited the capacity of sitting in parliament, as representatives for the counties, to those persons who have an estate, freehold or copyhold, for their own lives at least, of the annual value of 600l. and the right of sit-

[y] “Hitherto any man of English blood promiscuously had a right to give or receive a vote.”—Nath. Bacon’s Historical and Political Discourse of the Laws and Government of England. Continuation, p. 77.

[z] 9 of Q. Anne, chap. v.

ting as burgesſes, to thoſe who have an eſtate of the like kind of the annual value of 300 l. each of which eſtates muſt be above re-prizes. This was done in order to prevent needy men, who might be likely to be corrupted, from having a ſhare in the legiſlature, and to veſt that great truſt in thoſe who have competent eſtates. The act is ſtill in force; and is allowed to be reaſonable, though probably it affects a number of perſons of very good characters, and ancient families, who might otherwiſe be both willing and able to ſerve their country in this way. Theſe gentlemen, however, do not clamour at their being made incapable of that honourable truſt, nor do thoſe great numbers of the people of England, who are deprived of their right of voting for the knight of the ſhires, expreſs any uneaſineſs on that account. Now if ſuch abridgments may be made of civil rights, in order to guard againſt probable dangers, in theſe caſes, why may not the ſame courſe be taken on the like account, in the caſe of vehement diſſenters from the church of England? The danger of miſchief to the ſtate from their being admitted to a free capacity of all public offices, would be at leaſt as great, as from the capacity of men of leſs than 600 l. a year to be knights of the ſhires; or from the admiſſion of men of leſs than 40 s. a year freehold to vote in elections. There have been inſtances in the world, when men of ſmall private fortunes have made good ſenators.

“ *Privatus illis cenſus erat brevis,*

“ *Commune magnum.*

“ Their private wealth was ſmall, the public great,”

ſays Horace [a], of ſome of the Roman ſenators in the beſt times of that republic. There have been many inſtances when great numbers of people have met very quietly at elections. But I do not remember any caſe in which one part of a nation being of a different religion from the other, and having a fair proſpect of making their religion the ſuperior one, were not diſpoſed to endeavour it; nor can I think there will ever be ſuch an inſtance, while the general diſpoſitions of

[a] Carm. Lib. ii. Ode. xv.

mankind continue to be as they are. For though our dissenters have a turn of mind in some respects peculiar to themselves, yet in this point they would be like other men: so that the laws, which guard against such dispositions on their part towards the established church, are, at least, as justly founded as those other laws of which no man complains. If, therefore, the corporation and test-acts be unjust, and, as such, ought to be repealed, then the other two acts must, upon the same principle, be repealed likewise; and all the freemen of England, without any distinction, must be restored to their original right of voting, and of being capable to be chosen for knights of the shires. But if, without admitting this, the justice of our present laws relating to elections can be maintained; then it must, by a parity of reason, be acknowledged, that the dissenters, as being ill-affected to the church, and from thence likely to occasion disturbance and danger to the state, may have their capacity of publick offices justly restrained by the laws that require the sacramental test.

To a general reasoning of the kind here used some persons have objected, that by the same way of arguing these two things may be proved: first, that the greatest violences and barbarities possible may in several cases be justly practised against men on account of their religion. And, secondly, that such violences may, with full as much reason, be acted by men of a false religion, against those of a true one, by heathens, for instance, against Christians, as by the latter against the former. Both these consequences are absurd: and therefore the doctrine, from which they are justly deduced, must be false.

BUT to the former of these objections I beg leave to answer; that, upon our principle, no violence at all can be justly practised against any man, on account of his religion, merely as such; but only as this religion, either actually does, or, in all appearance, will incite him to use violence on his part, in order to deprive his fellow-subjects of rights annexed to their religion by the laws of their country. If, therefore, the objectors mean to represent us as maintaining that such violent courses as have been mentioned, may lawfully be taken against dissenters from an established church, without supposing that these dissenters actually use, or design to use, proportionable violences on their part against the establishment; they then draw a false consequence

quence from our principle; which will warrant only such a self-defence as is necessary, with regard to the dispositions and powers of the opponents. If they are peaceably disposed, or not much likely to make disturbances, by forcibly attacking the established religion, then, against them, violent methods will not be necessary, and therefore will not be justifiable. But if the objectors will make the supposition, that the enemies of an established religion break out into rage and tumult, and open force, or even give unquestionable evidence that they design to do so; then I make no difficulty of avowing, that those rough methods, which they themselves make necessary, may be justly used against them. For the rights which the subjects of an established religion have, in virtue of this establishment, are upon the same foot as any others of their civil rights, and may justly be defended by the very same methods. This no one can deny, unless he holds it to be wrong in the civil magistrate to grant such temporal advantages to the professors of any particular religion, as are implied in the notion of an establishment: for instance, to provide them places of worship; to maintain, at the public charge, the persons who officiate in their religion, and the like. If any one conceives that every thing of this kind is unlawful, he must then indeed dislike our putting the rights which thus accrue to any religion upon the same bottom with other rights of a civil nature. But as few persons, I believe, will openly avow this to be their opinion; as, on the contrary, it will be generally granted, and is evident in itself, that the magistrate may lawfully give such advantages to a religion: it must from hence plainly follow, that as long as his laws to this purpose are in force, the rights, which the professors of a religion so favoured derive from those laws, may and ought to be considered as standing on the same ground with other civil rights, and therefore may justly be defended by the same methods. Thus when the Anabaptists at [b] Munster, from a mixture of enthusiasm and villainy, attacked the established religion and government with open violence, it was undoubtedly lawful to use force against them: and it was as lawful to do the same against Venner, and the

[b] See Sleidan's Hist. of the Reformation, translated by E. Bohun, Esq; Lond. 1689. book x. p. 190.

other fifth-monarchists in England, notwithstanding they declared that they were led by God to what they did [c].

Nor that I would here be understood, as if I justified the use of such tortures, in any case of this kind, as are employed by the Romish inquisition, against hereticks and others accounted enemies of their established church. For though some persons have been pleased to affirm, that this is a necessary consequence of our principle, and have thereupon made sad lamentations to move the tender-hearted part of mankind; yet, in reality, these terrors are only the products of their own imaginations, and have no just connection with what we maintain. Our doctrine, as I have said, will justify only those measures of force that are needful for a reasonable self-defence: but such tortures cannot ever be needful for that purpose; and therefore they cannot justly be employed.

To make this appear, I would ask the objectors, what course they think might justly have been taken, if the English Papists in the reign of king James the Second had risen in arms, and declared that they had no intentions to hurt the civil government, which they greatly approved, but only to subvert the undue establishment of the Protestant religion? I believe the objectors will allow that all needful degrees of force might have been justly employed, in order to subdue them: that if they had made resistance, they might have been killed; and if they had been taken prisoners, they might have been punished, either with death, or with exile, or imprisonment, as would have been most expedient for the public welfare. But the question that I would ask, is, whether they might, in this case, have been justly tortured, after the manner practised by the Popish inquisition? I presume our objectors will answer in the negative: and their reason will be, that such tortures could not have been needful, either to the safety of the public, or to that of private persons; and therefore they could not have been justly used. Now this very thing we can full as well say with regard to any other opponents of our establishment, to whatever extremities they proceed. For our principle will have no farther consequences against such opponents, than the principle held by the objectors will have against

[c] Echard's Hist. of England, vol. iii. p. 43.

the Papists, in any case like that which has been mentioned. So that we are, in reality, no more chargeable with the cruelty of such consequences, than the objectors are themselves: which I humbly desire some gentlemen to remember, when they think of declaiming next upon this subject.

IN answer to the second objection above-mentioned, I will not allow that all establishments are equally rightful in themselves. For in truth, and with respect to God, no person or state can have a right to protect or encourage falsehood, or use any influencing method against the truth. A prince who maintains the teachers of Mahomedism, or Popery, is unjustifiable in so doing; and will be accountable for his conduct to God, the great searcher of hearts, hereafter. But I do allow, that when a false religion is actually established, it is upon the same foot as if it was true with regard to men: that is to say, the professors of a true religion have no right to use any forcible or illegal methods to overthrow the false one. For the truth of a religion does not give its professors any right to a civil establishment: because, though it be the duty of all men to promote the true religion by all proper methods in their power; and consequently the magistrate in every society is obliged to provide for the service of God, and the instruction of his people in a right way, that is, to establish the true religion; yet God has left it to the private judgment of the magistrate, as well as to that of every other person, to determine for himself which is the true religion: no other man hath a right to make the magistrate submit to his judgment in this point; and therefore, supposing the magistrate errs, and establishes a false religion, he will indeed be accountable to God for that wrong judgment, but he is not accountable to men; nor can they have a right to demand that he should make a civil establishment in favour of that religion which he disapproves. For civil emoluments, are, by the constitution of all societies, entrusted to the disposal of the supreme magistrate, who has a right to judge upon what persons they may, most fitly, be bestowed: and his judgment, though it should be wrong, yet ought to be submitted to by all private members of the society, so far, as that they ought not to use any illegal or violent methods to oppose it: which if Christians should do, they may be as justly punished by an heathen or Mahomedan magistrate,

as private subjects of these latter persuasions might be punished for the like proceedings, in a country where the Christian religion is established. In this respect, I grant that all established religions, whether they be true or false, are upon an equal foot: and this concession I do not take to be at all absurd, or of any weight against our reasoning, but to be founded upon the visible necessity there is for civil government, in order to the welfare of mankind.

THIS government could not long subsist, if any persons, under pretence that their religion, as being the true one, ought to be established, had a right to oppose, and endeavour by forcible methods to subvert the establishment, already made by the public authority. This must be a source of perpetual confusions; which God cannot be supposed to allow. And therefore the supreme magistrate, in order to the maintenance of peace in the society, must have a right to oblige all persons to acquiesce under his establishment, and be contented with a safe profession and exercise of their own religion, though without any civil emoluments annexed.

SUCH profession and exercise, indeed, ought to be allowed to all persons who are of a religion, that will be consistent with the welfare of the civil state; or will not put them upon disturbing it. Because every man hath a natural right to judge for himself in matters of religion, and to practise accordingly. That right, if it were always duly and peaceably exerted, could never hurt any civil state; and therefore it ought not to be taken away, or in any wise abridged, supposing it is probable that it will be so exerted. But whenever it is in fact, or in all appearance will be, used in such a way as to disturb the civil government, which is absolutely necessary to the welfare of mankind, and therefore must in all events be supported; then, even that right of professing and exercising such a religion is so far forfeited, and may be restrained by all the methods that are necessary to this purpose.

UPON this ground our laws against the Papists are made, and may very well be justified. Their religion is inconsistent with the welfare of our civil government; and therefore some penalties are laid upon the exercise of it, and much greater on those who are perverted to it [d].

[d] 23 Eliz. 1 Par. 2, 3, 4.

THE case of Protestant dissenters from our church is indeed very different. They are well affected to the civil state, considered by itself; and may practise their religion without any disadvantage to it. They ought therefore to be, as they are, allowed a free profession and exercise of it. But as their affection to the civil state, is joined with a settled ill-will to the church; as there is a very great probability that if they were admitted, without any restraint, to public offices of trust and profit, they would be as able, as they would be willing, to hurt that establishment of the church, which is very conducive to the interest of the state; and as their attempts, or known dispositions of this kind, would occasion animosities, contests, and disturbances among the people: from all these premises the consequence is plain, that out of a due regard and concern for public welfare, the vehement dissenters may justly be restrained by any fit means from taking offices in the state. This is the first of the general points that I proposed to make appear.

THE other point with which I am concerned, is to shew, that the present method, in which this restraint is laid upon dissenters, by obliging all men who take offices, to receive the sacrament of the Lord's-supper, according to the usage of the church of England, is also lawful. The objections against this method are, That it perverts the design of this sacred institution, and occasions much wickedness in unworthy receivers. In answer to which, I first observe, that our laws apparently mean to require that this sacrament should be at all times received in commemoration of Christ's death, and with sentiments of heart becoming that remembrance. For they require it should be received as our church enjoins; whose declaration to this purpose in her liturgy, is, with all the other parts of that service, confirmed by the act of Uniformity [e]. This act, which is now in force, was so likewise at the time when the test-act passed. And as subsequent laws must be designed to agree in their meaning and intent, with all those precedent ones that are unrepealed; the test-act therefore in requiring that all persons who take public offices should receive the communion according to the usage of the church of England,

[e] 13, 14 Charles II. chap. iv.

must be supposed to require that they should do it with such dispositions of heart as the church expects from them. Now the minister who notifies the time of a communion, is directed to acquaint the congregation, "that he purposes to administer to all such as shall be religiously and devoutly disposed, the most comfortable sacrament of the body and blood of Christ, to be by them received in remembrance of his meritorious cross and passion, whereby alone we obtain remission of our sins, and are made partakers of the kingdom of heaven.——He is to exhort them in the mean season, to consider the dignity of this holy mystery, and the peril of unworthy receiving thereof: and so to search and examine their own consciences, and that not lightly, and after the manner of dissemblers with God, but so that they may come holy and clean to such an heavenly feast. "Therefore," says he, "if any of you be a blasphemer of God, an hinderer or slanderer of his word, an adulterer, or be in malice or envy, or in any other grievous crime; repent you of your sins, or else come not to that holy table."——These passages shew how unjustly Mr. Chandler [f] has reproached our church "with encouraging infidels, heretics, and libertines into her communion." And as the meaning of the test-act ought to be considered as agreeing in this point with that of the church; it is plain that this law cannot justly be charged with intending to require any thing contrary to the nature or the end of the sacrament.

NOR can it be, with truth, objected, that the act of receiving it on occasion of a civil or military office, does necessarily raise any contrary dispositions of mind. For it is evidently possible in the nature of the thing, that a man who communicates on such an account, may, notwithstanding this, piously remember the sufferings and death of our blessed Saviour on our behalf; may have suitable movements of gratitude for them; may form resolutions of obedience to his laws; and may, in particular, from thence be disposed to real affection for all mankind: which dispositions our Lord designed should be excited or preserved by this solemn act in remembrance of his death.

[f] Vindication of a Passage of the Lord Bishop of London's second Pastoral Letter. Lond.

IF the objectors will not allow this to be possible, they must then maintain, that no man ever did receive the sacrament worthily, when he did it on occasion of a public office. But this they will hardly presume to affirm. For if they reflect on the number, the quality, and characters of the persons who have received it on such occasions, they will, I believe, find reason to grant that some in this number have done it worthily. And supposing this granted, in the case of some persons, it follows that the legal obligation which men may be under to communicate at a particular time, on a civil occasion, does not, necessarily, or in the nature of the thing, prevent any man from taking this sacrament at the same time, as he ought to do it in obedience to Christ: if this be true, then all men have it entirely in their power to communicate worthily, notwithstanding they do it partly on a civil account: and admitting this, there is plainly no ground for saying, “that the sacrament is turned from its original design to a purpose against its own nature and end.” For though indeed the law obliges a man, if he takes an office, to communicate with the church of England, and from his so doing, makes a conclusion, which it applies to a civil purpose; yet, as his act of receiving the sacrament may, at the same time, effectually serve all those purposes of religion for which it was at first intended, it is evident that the sacrament is not, by the law, in any degree perverted or abused.

BUT the enemies of the test-act are loud in affirming, that, however possible it may be to communicate worthily upon taking an office, yet the contrary is often known to be done; and men are guilty of very great sins upon such occasions: which sins, though indeed they are principally chargeable on themselves, yet are also to be justly charged on that act: for without such a law, there could be no such wickedness; and therefore the law is justly blameable, because it not only occasions sin, but lays men under temptations to it: which practice is repugnant to Christian charity, and to those express passages of the holy scriptures, that forbid us to lay stumbling-blocks, or occasions to fall, in the way of our brethren.

IN order to answer this objection, which has indeed a greater appearance of weight than any other that lies against the test; the first point to be determined is, whether all actions, which to other persons will be

be occasions or temptations to sin, are on that account unlawful? Our objectors will hardly maintain the affirmative, if they consider the practice of our Saviour and his apostles. For our Lord himself in going to festival entertainments, greatly offended the scrupulous Pharisees, and, in some sense, occasioned their sinning, as they did, by throwing unjust reproaches [g] upon him. Again, when he trusted what money he had to Judas Iscariot, he knew that the custody of it would tempt that ill-disposed man to be a thief, as he actually [h] was. And to mention a case that more nearly relates to the sacrament of the Lord's-supper: in the time of the apostles a feast of charity was joined to the communion, before or after it; in which the poorer sort of Christians were entertained at the expence of the more wealthy. This might very easily tempt some persons to come to the communion chiefly or wholly with a view to partake of the feast that went with it. We have reason to think it did so: for [i] some came hungry, others got to be drunk there. Now in the cases here mentioned, was the sin of the Pharisees, or that of Judas, chargeable in any degree upon our Saviour? Or were the love-feasts, on account of the ill effects they had upon vicious Christians, unlawful to be continued? The former of these questions needs no answer; and the latter may safely be answered in the negative. For, certainly, if the apostle had judged that those feasts were unlawful, he would have suppressed them; which was not done; for we find that they were commonly used [k] in the church, for more than two hundred years after our Saviour. From these examples, and from the nature of the thing itself, it is sufficiently evident that an action may sometimes be innocent and right, notwithstanding that it leads other persons into sin. And yet I do also readily allow, that ill consequences of this nature may, in several cases, make actions unlawful that would not be so if those consequences were away.

Our farther enquiry, therefore, must be, in what cases an action, innocent or indifferent in its own nature, becomes unlawful, by its being to others an occasion of sin. Now I humbly conceive, that a general rule in this matter is, that such an action will be unlawful, whenever

[g] LUKE vii. 34. [h] JOHN xii. 6. [i] 1 COR. xi. 21. [k] See Bingham's
Antiquities of the Christian Church, B. xv. chap. vii.

it is done without a sufficiently important cause on the part of the agent, so that it proceeds from a want of due charity in him towards those whom his action will affect. Both reason and the scripture agree in teaching us that men are not born for themselves only. We are strongly obliged to promote, as far as we are able (morally speaking) the good of others, as well as our own. And the former of these, whenever it is of very great moment, ought to be pursued in preference to, and in some measure at the expence of the latter; supposing that the damage or inconvenience that we shall suffer on that account will not be too grievous. Whoever is unwilling to give up thus far his own advantage, in order to prevent a very great mischief from coming upon others, especially a mischief of a spiritual nature, is wanting in the charity required by the gospel; and an action repugnant to this great duty must always be unlawful.

THIS case is the subject of the fourteenth chapter of the epistle to the Romans. Some scrupulous Christians were at that time in danger to be offended, or led into sin, by seeing others eat certain meats, which though they were indifferent in their own nature, and therefore innocently eatable by those who had no scruples about them, were, by the weak brethren, accounted unlawful. In this state of things, St. Paul, with regard to the ill effects that would be occasioned by eating those meats, determined that even the unscrupulous Christians were obliged to forbear them; and that to do otherwise would be a sin. The ground of which decision I take to have been, that as these persons could, without any great inconvenience to themselves, get other meats to subsist upon, it would therefore be a want of charity in them to eat this offensive kind of meats, and by so doing lead their weak brethren into sin. But let us suppose the case had been such, that the unscrupulous Christians could not have abstained from the offensive meats, without very great damage to themselves and to the public: for instance, that in a town closely besieged, no other but horseflesh, accounted unlawful by the weak Christians, had been procurable; and at the same time, the constitutions of the unscrupulous Christians, who were far the more in number, had been such as would have suffered extremely unless they were allowed to eat some kind of flesh. Would an hundred Christians of this latter sort have been obliged to abstain

abstain from eating that flesh, and so ruin their healths, of great moment to the public, merely to avoid offending a few such weak and ill-judging brethren? I think this will not easily be said, or at least not made good.

I WILL put another case to the same purpose, that may fall in more with common life. There is one who has somewhat of mine in his possession, which he thinks to be his own: and I know that his temper is so warm and obstinate, that he would be likely to defend his possession of this thing by all the methods in his power, especially by taking iniquitous advantage of the forms of law: by doing which, against my just claim, he would probably be guilty of many sins. I grant that in such a case, as far as I only am concerned, I should be obliged to forbear, either suing at law, or taking any other method that would probably put this man upon sinning, for a matter of no great moment to myself. But will any one say, that I should be under the same obligation of forbearance, if an estate of great value and importance to me and to my family, were thus in question between us? Undoubtedly I should not. Because though charity may oblige me to prevent any hurt to my neighbour, as far as I can do it without great damage to myself; yet, when I must suffer much by so doing, a regard to myself then justly takes place of my concern for him. This is the determination of Grotius [1] in the case. “We cannot avoid
“all things, says he, that may occasion other men to sin: but those
“things we are obliged to avoid, which we are not put upon, either
“by necessity, or any advantage” (of considerable moment).

AND if this rule holds in private cases, it may undoubtedly be followed in those that relate to the interest of the public. For, unless this were allowable, no civil societies could long subsist: because hardly any regulations could be made for the public welfare, that might not prove occasions of sins to some persons or other. And therefore the interest of all such persons, unreasonably offended, especially of those who sin, not from error, but presumptuously against the clear light of their consciences, may justly be made to give way to the safety or

[1] Annot. ad Rom. xiv. ver. 13. “Occasiones omnes alienorum lapsuum vitare non possumus; sed vitandæ sunt eæ, ad quas necessitate nulla aut utilitate impellimur.”

interest of the public. Upon this principle divers of our laws are continued in force, which yet are known to be occasions or temptations to much wickedness. For instance, the laws which lay so high customs upon several commodities, occasion and tempt men to the practice of importing them in a clandestine way without paying the custom. The laws which oblige men to take oaths upon the entry of goods at the custom-house, and in many other cases of the like nature, do often tempt them to perjuries; which would doubtless be prevented, in a great degree, if there were no such laws. But because the interest of the public requires them, they may very well be justified, as even our dissenters, I think, will allow. And by a most evident parity of reason, the corporation and test-acts may equally be justified, whatever ill consequences follow upon them, with regard to those who unworthily receive the sacrament of the Lord's Supper, on account of offices in the state.

HOWEVER, I do very freely acknowledge that if any other method could be found out, not liable to these ill consequences, and equally effectual to secure the establishment of the church of England, from the attempts of those who are ill-disposed to it, our legislators would be obliged, in regard to the spiritual interest of some of our fellow subjects, to prefer such a method to that of the sacramental test. And I believe that whenever such a method shall be proposed, it will readily be pursued by our superiors in the state, without any dislike on the part of those in the church. Indeed if we judge from the public acts, and well-known temper of most of her clergy, the disposition of the church of England towards the dissenters, appears to be truly moderate and Christian. She is very willing they should enjoy all that liberty of profession and worship which they think needful to their spiritual welfare. She heartily wishes they may use it so, as to find and embrace the truth in love: and if they do not, she commends them still to the mercy of God, and prays that he will not lay their schism to their charge. But with this Christian charity she has, as she ought to have, a proper mixture of Christian prudence; so much as is needful to guard herself from suffering by their prejudices against her. She cannot but fear what might be, at proper conjunctures, the workings of such spirits as can take offence at the colour and shape of a decent vestment,

vestment, or at a posture of the body expressive of fitting humility and reverence in the worship of God. She has found by experience, that they who have strained at things of this sort have made no scruple to swallow her revenues and lay waste her sanctuaries. She only desires to be secured against such usage in the time to come; and to be maintained upon that bottom which is necessary to prevent strife and confusion, and thereby to preserve to all parties a full and well regulated liberty of religion. To this purpose, the wisest men of all ages have been sensible, that an establishment of some one religion is necessary: and the church of England having been planted from the beginnings of the Reformation, and having hitherto brought forth much good fruit, to the honour of God and the welfare of this kingdom; it is but reasonable she should keep her station. Accordingly, she trusts that all faithful members of her communion, however they may be otherwise distinguished into parties, will use their endeavours to support her in it; and she humbly hopes that the blessing of God will make them successful.

TRACT IV.

On the liberty recovered to the people of England, by suppressing the authority formerly exercised over this realm by the bishop of Rome.

IN order to vindicate the right of private judgment, against the Romish claim of infallibility, and absolute authority in all matters of religion, the first of these tracts hath shewed, that the church of Rome maintains a gross error in her doctrine about transubstantiation in the eucharist, and is therein also guilty of a practice heinously sinful in her adoration of the host. These things alone, when required, as they were, to be believed and practised by every member of her communion, must have laid all good Christians under a necessity of making and continuing an absolute separation from it. But there are divers others of her practices now to be mentioned, by which this necessity is greatly enforced, viz. her doctrine and practice about the sacrifice in the mass, the eucharistical communion in one kind only, and the religious invocation and worship paid by her to angels and departed saints; all which we affirm to be wholly without ground in, and even manifestly contrary to, the holy scriptures.

WITH regard to the first of these, the sacrifice in the mass, we, indeed, make no difficulty of allowing, that the eucharist may, in some sense, be called a sacrifice. This term is used by the sacred writers in a very large sense; they apply it, not only to the offering and consuming of beasts, and other material things, in the service of God, but to the faith of Christians, to their thanksgivings, to their alms; to the preservation of their bodies and minds in a state of purity, and the like intellectual and moral acts. There is no doubt, therefore, but that the commemoration of our Saviour's death upon the cross for our redemption, being accompanied, as it is, in the sacrament of the Lord's supper, with the offering of bread and wine by the minister, and the consumption of them by him, and the other communicants, in humble acknowledgment of the sovereignty of God, and in gratitude for his goodness in our redemption by our Lord Jesus Christ, may be very justly termed a sacrifice. And if the church of Rome were to do no more than

than this, we should have no dispute with her on this point; what we condemn is their offering up to God the sacramental substance, “as being the same real and natural body of Jesus Christ which suffered upon the cross [m], and their offering that sacrifice as effectual with God for the pardon of sin.” That this is the doctrine of the council of Trent, the following passages sufficiently prove. That council first declares, that in the sacrament of the eucharist, immediately after consecration, there exists the true body of our Lord, and his true blood under the species of bread and wine. And at another time it decrees [n], “that if any one shall deny that the body and blood, together with the soul and the divinity of our Lord Jesus Christ are contained in the eucharist truly, really, and substantially; and shall say that they are there only as in a sign, a figure, or a virtue, let him be anathema.” Roger Hoveden [o] represents pope Urban II. as having said, that the hands of a priest “eo honoris et dignitatis pervenisse, ut signo suo Deum creent qui creavit universa, atque eum offerant Deo patri pro omnium hominum salute, quod ipsis quoque angelis non licet.” The catechism made for the use of the parish priests in the instruction of the people, adds, for further explanation, “that the true body of Christ, the very same that was born of the Virgin, and now sits in heaven at the right hand of the Father, is contained in the sacrament.” Now of this same body of Christ, the council affirms that it is, by his command, to be offered up as a sacrifice by the priest in the eucharist: at the last supper [p], says the council of Trent, in the night in which Jesus Christ was betrayed, he, declaring himself to be appointed a priest for ever after the order of Melchisedec, offered his own body and blood, under the species of bread and wine to God his father, and, under the symbols

[m] Verum Domini nostri corpus, verumque ejus sanguinem, sub panis et vini specie. Conc. Trid. sess. xiii. cap. iii.

[n] Siquis negaverit contineri vere, realiter, et substantialiter corpus et sanguinem una cum animâ et divinitate Domini nostri Jesu Christi, sed dixerit esse tantummodo in eo, ut in signo, vel figura, vel virtute, Anathema sit. [o] Part I. p. 268.

[p] In coenâ novissimâ quâ nocte tradebatur Christus, sacerdotem secundum ordinem Melchisedec se in æternum constitutum declarans, corpus et sanguinem suum, sub speciebus panis et vini Deo patri obtulit, et sub earundem rerum symbolis, Apostolis, quos tunc Novi Testamenti sacerdotes constituebat, ut sumerent tradidit, et iisdem & eorum in sacerdotio successoribus ut offerrent præcepit per hæc verba, hoc facite, in meam commemorationem. Conc. Trid. sess. xxii. cap. i. p. 198.

of the same things, delivered them to the apostles whom he then made priests of the New Testament, that they might take them, and commanded the said apostles and their successors to offer them by these words, "This do in remembrance of me." After such plain declarations as these, some learned men have, in vain, endeavoured to make this sacrifice in the church of Rome pass for being designed as no otherwise a sacrifice, than as it is a commemoration of the original sacrifice offered up upon the cross. It is evident, that the council of Trent supposes the natural body of our Saviour to be, though not killed afresh, yet, at least, to be offered up to God in every mass; and this, indeed, was avowed by the late bishop Bossuet of Meaux, who says, I am sensible that [p], if I have need that Jesus Christ should be my victim, it is necessary, in order to accomplish his sacrifice, that he present me this victim to eat, not only spiritual, but also as really and as substantially as it has been sacrificed; otherwise I should not be sensible that it is for me it has been sacrificed, and that it is completely mine. The same thing is still more clearly asserted by Mr. Hardouin, who says, that they [q], namely the Protestants, suppose that the word sacrifice cannot be understood but either of the killing of the victim, or of the commemoration that is made of it, in an assembly called together to hear an account of it, and to see the representation made of it to their view. But there is a mean in this case: the victim which was once slain on the cross comes, at the voice of the priest, to hide itself under the species of bread and wine [r], in order to offer itself, and be offered

[p] Je sens que si j'ai besoin que Jesus Christ soit ma victime, il faut, pour accomplir son sacrifice, qu'il me presente cette victime à manger, non seulement en esprit, mais encore aussi reellement, aussi substantiellement, qu'elle a été immolée: autrement je ne sentirois pas, que c'est pour moi qu'elle l'a été, et qu'elle est, tout à fait mienne. Sixieme Avert. vol. iv. p. 208.

[q] Ils, i. e. les Protestants, supposent ainsi, que le mot de sacrifice ne peut entendre que de l'égorgement d'une victime, ou de la commemoration qu'on en pourroit faire dans une assemblée convoquée pour en entendre le recit, et pour voir la representation qu'on pourroit exposer aux yeux. Mais il y a icy un milieu: la victime une fois immolée sur la croix vient à la voix du prestre se cacher elle même sous les especes de pain et de vin, pour s'y offrir, et pour estre offerte à Dieu par le prestre; il n'y a point immolation nouvelle; mais ce n'est pas aussi un simple souvenir de l'immolation passée. Hardouin contre Courayer, tom. ii. p. 86.

[r] That this is the common belief of the Romanists, appears from the following passages of Mezeray's Abridg. This historian, speaking of St. Louis in Egypt, says, C'est une fable qu'il ait donné aux barbares une hostie consacrée pour gage de sa parole. Il se fust exposé mille fois à la mort, plutôt que de livrer

ferred to God by the priest: there is no new killing, but at the same time there is more than a bare remembrance of the killing that has formerly passed. This doctrine of Mr. Hardouin has lately been made public without any censure, or rather with marks of approbation, not only from his brethren the Jesuits, but from many others in the church of France: it is, therefore, beyond all exception, plain, that every one who receives the council of Trent, and joins in communion with the Romish church, is, according to her notion, obliged to believe that the very natural body and blood of Jesus Christ are offered up in sacrifice in the mass; but since the doctrine of transubstantiation has been shewn to be false, it clearly follows, that this their practice of pretending to offer the real and natural body of Jesus Christ, as a sacrifice to God, is a practice for which they cannot have any just ground in the holy scripture, or in reason, but much in both of them against it; consequently it is an action of plain will-worship, of gross absurdity, and of heinous presumption, and as such must be very offensive to God.

It must be still more so, on account of that propitiatory virtue, which is ascribed to it by the church of Rome. The council of Trent, in chap. ix. of the sacrifice of the mass, Can. iii. declares, “That if any one shall say, that the sacrifice of the mass is only of praise and thanksgiving, or barely the commemoration of the sacrifice finished on the cross[s], but is not a propitiatory sacrifice, or that it profits only him that receives it, nor ought to be offered for the quick and the dead, for sins, for punishments and other necessities, let him be accursed.” The council here asserts, that the sacrifice of the mass is more than a bare commemoration of Christ’s sacrifice on the cross; it is propitiatory for sins, not only to those persons who receive the communion, but to other persons both living and dead. Now on what ground can it justly be affirmed, that this sacrifice can make a propitiation for sins? The

livrer son Dieu à ces impies. Abr. tom. i. p. 449. Le meme tom. i. p. 456. Il arriva cette année, 1204, en un village pres d’Orviette, qu’une hostie jetta du sang sur les corporaux pour convaincre l’incrédulité du prestre qui celebrait la messe. Le Pape Urbain, persuadé de cet miracle, institua la feste et procession du saint sacrement, pour être solemnizée le Jeudi d’après l’octave de la Pentecoste. Saint Thomas de l’Aqui, qui estoit pour lors professeur en theologie à Orviette, en composa l’office.

[s] Si quis dixerit missæ sacrificium tantum esse laudis et gratiarum actionis, aut nudam commemorationem sacrificii in cruce peracti, non autem propitiatorium, vel soli prodesse sumenti, neque pro vivis et defunctis, pro peccatis, poenis, satisfactionibus, et aliis necessitatibus offerri debere, anathema sit.

Romanists,

Romanists, as well as all other Christians, agree, that the sacrifice of Jesus Christ himself on the cross, made a full and universal propitiation for the sins of all mankind, who act so, as to intitle themselves to the benefit of it. How then can there be any need, or any room for this other sacrifice of the mass to be at all propitiatory in regard to any sins? If the former was absolutely and universally effectual in the way of propitiation, the latter must be quite superfluous: it is, therefore, on this account, highly probable, that God instituted it not as a method of propitiation in any case; and, without his institution, it is certain, there cannot be any true means of propitiation for sins; for he, who only can pardon them, can only determine upon what terms, or in what method he will do it. Now he has nowhere declared in the holy scriptures, that he has ordained any other sacrifice for this purpose, but that of Jesus Christ upon the cross: on the contrary, he has plainly made known that this sacrifice on the cross was to be the only means to that end; and farther, that this sacrifice was never to be repeated; for this is the main scope of the reasoning of the author of the epistle to the Hebrews. He observes, chap. x. 11. that, *Every priest among the Jews stood daily ministering and offering oftentimes the same sacrifices which could never take away sins. But Christ, says he, ver. 14, by one offering hath perfected, for ever, them that are sanctified.* He hath made so full an atonement and expiation for them, that there is no need of, nor does there remain, any more sacrifice for sin: but this man, ver. 12, after he had offered one sacrifice for sins, for ever sat down on the right hand of God. And ver. 10. *We are sanctified through the offering of the body of Jesus Christ once for all.* Nothing can be said plainer than this, against the sacrifice of the mass, wherein Christ is often offered, and that, as properly and truly (the Romanists pretend) as the Jewish sacrifices were, or as he himself was upon the cross. The argument of the apostle against the repetition of the Jewish sacrifices, proveth as strongly against the sacrifice in the mass, which, by the church of Rome, is no less frequently repeated.

BESIDES, that sacred author lays down a principle which shews that the Romish sacrifice in the mass cannot be truly propitiatory for sins; for he affirms, Heb. ix. 22. that without shedding of blood, *i. e.* without death, there is no remission of sins. Christ, therefore, once suffered death

death in his sacrifice of himself upon the cross. But in the Romish sacrifice, they do not pretend that Christ is again put to death, therefore their sacrifice cannot be truly propitiatory. The late bishop of Meaux, Bossuet, indeed, says, that Christ suffers mystically in the sacrament (see his *Expos.*). But mystically suffering is far from being the same with really suffering death; which latter is necessary to propitiation for sins. See *Disc. against Sacr. mass*, p. 40, 41, and bishop Burnet's *Exp. of 31st Article*, &c.

OTHER performances in religion, indeed, and particularly the receiving the eucharist, may be, in a lower sense, called propitiatory; because when they are accompanied with proper dispositions of mind, they render God propitious to, or pleased with, us. But they do this only by their relation to, and by their virtue of, the only sacrifice of Christ on the cross, and not by any intrinsic virtue of their own (*Disc. p. 80.*). And therefore they are not of themselves truly or properly propitiatory for sins: and therefore, no more can the sacrifice in the eucharist be propitiatory for sins. It is, therefore, a great and dangerous abuse to represent it as being so, even to the communicants: but yet much more so, to suppose that other persons who know nothing of its being celebrated, nor can, therefore, at the same time, exercise on their own parts any acts of contrition, repentance, faith, love, or the like towards God, should be benefited by it. To represent God as having vested such a power in a priest to propitiate for sins in such a way, is plainly inconsistent with, and unworthy of, the divine perfections; for which reason the church of England, in a just indignation against this doctrine, and the consequent practices, makes no scruple of calling it a blasphemous fable. *Art. 31.* And considering how apt weak and ill-judging persons are to rely upon such confident, though groundless, pretensions, and thereby neglect the right means of working out their own salvation, and so come to perish eternally; on this account our church, with great reason, calls it a dangerous deceit or imposition upon mankind.

It is, indeed, visible what motives the church of Rome has had, and still has for going into it; for this hath been one of the most effectual means of its heaping up wealth, and of maintaining great numbers of priests to say masses, and perform these supposed propitiatory sacri-

fices. But whatever temporal advantage the clergy make of it, the people can make none, but are in very great danger of relying so much upon these groundless and vain performances in the way of supposed propitiation for their sins, that they will, in the end, be for ever ruined; and the church is justly liable to severe condemnation for doing what she ought not, *for filthy lucre's sake* [t].

I HAVE hitherto considered the doctrine and practice of the church of Rome, only as she applies the sacrifice of the mass, in the way of propitiation for the sins of the living; she goes yet further, and supposes it effectual for relieving the pains of persons in a suffering state, by way of purgation after death, and for making satisfaction on their behalf; but as these considerations will be mentioned hereafter in the fifth tract, I shall leave them here, and proceed to the next thing of great moment, which renders the communion of the church of Rome unlawful; her denying to the laity the consecrated wine in the sacrament of the eucharist, and obliging them to be contented with receiving only the bread. This practice, which is now universal in that church, is established by the council of Constance [u] upon pain of anathemas to those that oppose it; but how very unjust that sentence is, and how unlawful the practice itself, we shall find, if we consider the words and the design of this institution. Our Saviour, in giving the cup of wine to his apostles, said, *Drink ye ALL of this, for this is my blood of the New Testament which is shed for many for the remission of sins* [w]. To which St. Mark, xiv. 23. adds, that, *they ALL drank of it*. The design of our Lord, in this institution, was to exhibit a lively and affecting memorial of his sufferings and death for the redemption of mankind, and of his intimate union with them for the purposes of gracious assistance and consolation; with this view, by the symbols of bread broken into pieces, and wine of a red colour, he represents his own body as pierced, and his blood as separated from it, in order to denote the violence of his sufferings, which ended in his death: and to express the great interest we have in his passion, and the entire efficacy of that sacrifice with regard to us, he orders the symbols of his flesh

[t] TIT. i. 11.
1 COR. xi. 25.

[u] Decr. Conc. Constant.

[w] MATT. xxvi. 28. LUKE xxii. 19.

and blood to be eaten and drank by us. In the Mosaic law there were some sacrifices in which no part of the flesh was allowed to be eaten by any one. Of others, the priest only, not the people, was to eat a part: and in all animal sacrifices, the blood, as being the life of the creature [x], was forbidden to every one. But under the gospel, in order to shew that the atonement made by the blood of Christ is complete, that the application of it to us is effectual, and that Jesus Christ being, as it were, incorporated with us, becomes our spiritual nourishment and life, he requires us not barely to commemorate his death as being our sin-offering, but to eat the consecrated bread, which is the symbol of his flesh, and to drink the wine which represents his blood. This circumstance of eating his flesh, Bossuet, bishop of Meaux, insists on very much, as being designed to give us more lively impressions of the benefits we enjoy by this sacrifice of Christ, than could have been done by a bare visible representation of his sufferings denoted by the breaking of the bread. Now if this was the design of requiring us to eat the bread, why should it not be as strong a reason for our drinking the wine? Since the wine poured out in this sacrament, as it represents our Saviour's blood in a state of separation, was, no doubt, intended to signify that our Saviour actually died for us: on which account, indeed, the Romanists allow that both the presence and the consecration of the wine are essential to this sacrament. But if the eating the bread be requisite, as more effectual than barely seeing it broken, why should not drinking the wine be, for the same reason, necessary, as more effectual than only seeing it poured out? Since, as cardinal du Perron himself allows [y], "They who receive
 " the sacrament under both kinds, are more expressly and particularly
 " admonished, that his body has been divided from his blood in his
 " suffering on the cross." This reasoning is plainly as strong in the case of one of the species, as in that of the other: and accordingly we find, that, in fact, our Lord made no difference between them; or, if any such was made, he seems to have laid rather more stress upon

[x] GEN. ix. 4.

[y] Chacun de ceux, qui prennent le corps et le sang de Christ Jesus sous les deux especes, est plus expressément et particulièrement admonesté que le corps a esté divisé de son sang au supplice de la croix. Du Perron, p. 966.

drinking the wine than upon eating the bread, by saying, *Drink ye ALL of it.* These considerations, drawn from the design of the sacrament, can have no peculiar regard to the apostles more than to other men; because it was appointed with a view to work effects which ought to be produced in all Christians as well as in the apostles; since all other Christians as well as they are intitled to the benefits of Christ's death. Now this sacrament being appointed as an assurance of these benefits, and a mean of obtaining them, it must follow, that such a manner of receiving it as is, in the nature of things, the most effectual, must be supposed to be intended for all other men, as well as for the apostles. This ought to be supposed, unless there had been some express distinction made between them, of which there is not the least appearance. The Romanists, indeed, have a notion, that our Saviour, at the last supper, made his apostles priests; for they observe, that he used the sacrificial word *ποιεῖν*, as importing an action that required and supposed the character of priesthood [z]; from whence they argue, that his command that they should all drink of the cup, having been given to them in the quality of priests, is, therefore, not to be extended to the laity: but to this we answer, first, that the word *ποιεῖν* may very well be taken in a general sense, for any other action as well as a sacrificial one; and since no one knows what the Syriac word was which our Saviour used on this occasion, nor whether it had a sacrificial sense or not, we cannot be assured that the evangelists, in translating it by the word *ποιεῖν*, intended to use this latter in a sacrificial sense or not. But even though the sacrificial sense of this word were admitted, it would not from thence follow that our Saviour must intend the apostles only should receive the cup; his design in using such a term, might be only to intimate, as priests that they were to consecrate this sacrament, and then give it to others, as well as to receive it themselves; in which supposition there is nothing against other men's receiving the cup. All that can be said to that purpose is, that if these words are understood, and consequently were addressed to the apostles only, then they

[z] The learned dean Hickee has observed, in the preface to the second part of his tracts against Popery, part lxxvii, that not only *ποιεῖν* has a sacrificial sense in some places of the Septuagint, but that the word *קָדַשׁ* has the like sacrificial sense in the Hebrew. But still it does not appear that our Saviour used that particular word on that occasion.

do not contain any express precept to lay-persons for receiving the cup; but if the Romanists will say this, they must also maintain, that there is no precept in them for lay-persons to receive the bread; for the words, *Do this*, relate evidently to receiving the bread, as well as to drinking the wine. But as the Romanists allow, that all Christians are by these words commanded to take the bread as well as the apostles are, they ought likewise to allow, that all Christians are commanded to drink the wine.

AND this, indeed, evidently appears from what is said by St. Paul [a]. The apostle there addresses himself to the whole body of the Christians in the church of Corinth, without any distinction. He gives them an account of the circumstance of the first institution (without the least hint that only those among them who were priests were intitled to drink the cup) and says of them all in general, that, by eating that bread and drinking that cup, they shewed forth the death of our Lord till he should come, ver. 26. He bids every one of them, ver. 28. examine himself, and so eat of that bread, and drink of that cup, joining constantly the doing the latter of these actions with the former.

THERE is very little weight in the observation which some persons have made, that in the twenty-seventh verse of this chapter, some copies have η , *or*, instead of $\kappa\alpha\iota$, *and*. There is no reason to prefer the former of these readings to the latter, which our translators have chosen; for this latter is supported by some of the best manuscript copies, particularly the Alexandrine. But supposing we should read η in this verse, it would only shew that the apostle had a mind to represent more strongly the sin of communicating unworthily, by specifying each part of the communion by itself; not that one part only would be sufficient; the contrary to which appears by his having always joined them before.

THIS evidence for the necessity of communicating in both kinds, which has been deduced from the texts of Scripture, and the other considerations here above-mentioned, is not a little confirmed by the general practice of the church in this point during all those ages in which her practice was of any great weight to prove the right method

[a] 1 COR. xii. 20.

of acting in this point. She constantly admitted and required all Christians to receive the cup, as well as the bread, in the public celebration of the Lord's supper. This might easily be shewn, by transcribing those testimonies from the ancient writers of the church, which have been collected by the learned Albertinus, L'Arroque, and others: but there is no need of so doing, because the most learned and impartial among the Romanists themselves professedly agree, that, for many ages, from the time of the apostles, the communion in public was always given and received in both kinds: "Nor do I think, says Cassander [b], it can be shewn, that, for a whole thousand years and more, this most holy sacrament of the eucharist was ever administered, from the Lord's-table, in the holy communion, to the faithful people, in any part of the Catholic church, otherwise than under both the symbols of bread and wine." And after him, cardinal Bona has affirmed it as certain, that all Christians in general, lay-men and women, did anciently receive the sacred mysteries, under both kinds, when they were present at the solemn administration of them. After these evidences of ancient and universal practice in the church, most plainly grounded on divine institution, is it not wonderful what could induce the church of Rome to make such a momentous alteration, as wholly to suppress receiving the species of wine by any of the communicants, excepting only the officiating priests! The principal reason that led her to make this change, was the prevalence of the notion, about the ninth century, that Christ's natural body was present in the eucharist; when this notion obtained, there soon followed upon it an excessive and superstitious reverence towards the consecrated substances. They were afraid, not only of spilling any of the wine, but of letting it hang upon their beards, as they dipped them into the cup when they drank it. In order to prevent this inconvenience, they, for some time, used to suck the wine out of the cup through long pipes; but afterwards they thought that all hazard of this kind would be best avoided by taking the communion in the species of bread only, which could be much

[b] De Sacr. Comm. sub utraque specie. Oper. p. 1027. "Nec puto demonstrari posse totis mille amplius annis in ulla Catholicae ecclesiae parte sacrosanctum hoc ecclesiae sacramentum aliter, in sacra synaxi è mensâ Dominicâ, fideli populo, quàm sub utroque panis et vini symbolo administratum fuisse."

more easily and safely managed: they concluded withal, that they should not lose any spiritual benefit by taking only one species; since Christ's real and natural body being under the species of bread, his blood, and all the virtue of it, must needs be contained in one kind, as much as in both. This was plainly the ground upon which the council of Constance went: "Although, says the council, in the primitive church the faithful received the sacrament under both species, nevertheless, for avoiding certain perils and scandals, this custom hath, with reason, been introduced; that the officiating minister should receive under both species, and the lay-men under the species of bread only: in regard that it ought to be firmly believed, and not at all be doubted, that the whole body of Jesus Christ is truly contained as well under the species of bread, as under that of wine."

THE council of Trent proceeded upon the very same foundation. Its words are these. "Although our Redeemer instituted this sacrament, in both kinds, and gave it so to his apostles, it must nevertheless be confessed, that the whole Jesus Christ, and the true sacrament, is received in one kind; and accordingly as to the benefit of it, those persons are not deprived of any grace necessary to salvation who receive it under one kind only." But here I must observe, that even, if we should suppose the truth of the corporal presence of Jesus Christ in the eucharist, it would not follow that the body and blood of Christ would have an efficacy of course without any regard to the end and circumstances of the institution. For it cannot be supposed to have this efficacy in a merely natural way, but in virtue of the will and appointment of God. Bossuet, bishop of Meaux, indeed, took upon him to say [c], "That although Jesus Christ hath separated his body and his blood, either really on the cross, or mystically on the altars, yet he cannot separate the virtue of them, nor cause any other grace to accompany his blood when shed, than what also accompanies his sacrificed body." But, surely, God is under no necessity in this case: his divine substance, though it always is united, in the most intimate

[c] Encore que Jesus Christ ait separé son corps et son sang, ou reellement sur la croix, ou mystiquement sur les autels, il n'en peut separer la vertu, ni faire qu'une autre grace accompagne son sang repandu, que la même au fond que accompagne son corps immolé. *Traite de Commun. p. 228.*

manner to our souls, yet does not naturally, or of course, communicate any spiritual benefits to us: and why then should the sacred flesh of Jesus Christ naturally and necessarily impart any such virtue? No one can assert that it must, without derogating greatly from the absolute liberty and other attributes of God. All sensible Romanists must admit, that this must wholly depend upon our Saviour's intention and will to communicate his grace: and this intention will, no doubt, be determined by our conforming or not to the terms of his institution. No one can be intitled to expect his grace who omits to perform the circumstances he required in order to it; unless there be reasons of great moment to disable or hinder him from so doing: such reasons may, indeed, be conceived to excuse men before God; but unless there be such in the case, no benefit can be justly expected by those who depart from the circumstances of a divine institution. And were the reasons given by the church of Rome of such importance or necessity? It is plain they were not, even supposing their doctrine of the corporal presence to be true; for those reasons are drawn from things that Christ must have foreseen when he instituted this sacrament. The consecrated wine was liable to be spilled, and men had beards that would be dipped into it in his time as well as in after-ages. And if he thought fit to ordain that the sacrament should be received in both kinds, notwithstanding these pretended inconveniencies, the same could not be just reasons for making a change afterwards in his institution: but since the doctrine of the corporal presence hath been proved to be false, it is evident that those reasons are still more frivolous, and the alteration much less to be excused; that church (upon a point of doctrine, grossly erroneous in itself, and which she might easily have known to be so) hath maimed and rendered ineffectual the most graciously beneficial institution of Christ, which, out of a due sense of his immense goodness towards us, was constantly adhered to in the purest ages of the church. This must be very justly accounted a grievous sacrilege in those who take away the cup; and those who want it, and acquiesce under the want of it, must be reckoned very blameable as well as unhappy.

ANOTHER practice which we condemn in the church of Rome, is their invocation and worship of angels and of saints departed out of this life.

life. Our charge against her in this point is founded on a decree of the council of Trent relating to it, considered together with the constant practice of that church; the latter of these shewing the true spirit and meaning of the former. The council of Trent decrees, “that the saints, reigning with Christ, are to be invoked for their prayers, and for their assistance, *opem et auxilium* ;” which last expression plainly implies, that they assist us in some other respect besides by their prayers on our behalf. And this notion is confirmed by the liturgies of that church in which all who assist at the public worship are obliged to join, and by which the people are naturally led to regard and address to the saints and angels, but more especially to the blessed virgin, as patrons and protectors, who have power and particular office to assist their votaries on several occasions. I will not trouble you with instances of this nature; you may easily find them in books made public by authority in all the Romish countries: I shall only observe a known matter of fact; which is, that by using those liturgies, and other books of devotion agreeable to them, the lower people in that communion have generally been, and are now, persuaded, that not only the common protection and advantages of life, but the highest spiritual blessings may lawfully and properly be asked of the saints, some of whom they worship with a zeal which makes them often neglectful of God the Father, and of Christ our Redeemer. This has been often confessed and complained of by several of the more moderate among their own writers. Ludovicus Vives, an author of eminence in that communion, speaking of the devotions paid by the Romanists to their saints [d], says, “They worship them as having, in many respects, the same opinion of them which the gentiles had of their gods.” Cassander, a person of distinguished learning and probity in that church, speaking of the worship of saints, says [e], “Another error is, that men of no bad dispositions have chosen for themselves certain saints as peculiar guar-

[d] Eos non aliter venerantur, quam Deum ipsum. Non video in multis, quod discrimen sit, inter eorum opinionem de sanctis, et id quod gentiles habebant de Diis. In notis in S. August. De civ. Dei, lib. viii. cap. 27.

[e] Alter error est, quod homines, etiam non mali, certos sibi sanctos tanquam tutores & patronos sibi delegarunt, atque in eorum meritis et intercessione, plus quam in Christi meritis, fiduciam posuerunt. Atque adeo unico illo advocacy Christi officio obscurato, sanctos et imprimis virginem matrem, in illius locum substituerunt.

“dians and patrons, and have placed more trust in their merits and
 “intercession than in the merits of Christ; and so throwing a neglect
 “upon Christ’s office of intercession, they have put the saints, and
 “especially the Virgin-mother, into his room.” And more lately
 Flechier, bishop of Nismes, expressed himself to the same effect [f].
 “Who can hear, without indignation, those parallels which are some-
 “times made of the saints with God and with Jesus Christ; by ascrib-
 “ing to them a kind of holiness which is peculiar to the sovereign
 “sanctifier of souls, and an efficacy of conversion, which belongs only
 “to him who is, by his mediation, the author and finisher of our
 “salvation !”

THESE unhappy consequences may, without injustice, be charged upon the church of Rome; because she has not prevented such occasions of scandal, by forbearing the use of these liturgies and offices, which, as Bellarmine [g] himself allows, seem to imply, “more than the
 “form Ora pro nobis.” But even if all their prayers had been reduced to this form, yet still such addresses to angels and saints departed, would have been not only unwarranted by reason and the Scripture, but repugnant to both of them.

THERE could be no ground from reason for this practice of invoking and worshipping saints departed, because reason could not give us any assurance that they know all that passes upon earth, or even any of the particular wants and distresses that we may be under on some occasions: on the contrary, it represents it as more probable, that the souls of men departed, and even other spirits of higher orders, as they cannot be at one time in more than one part of the universe, must be ignorant of some things that happen in other very distant parts of it: but especially, reason gives us almost an assurance that our thoughts and mental prayers cannot, ordinarily, be known either to saints or angels. For these being the internal operations of our souls, are only discoverable by God the Father of spirits, who, by his immensity, is united intimately to

[f] Qui pourroit écouter sans indignation ces paralleles qu’on fait quelque fois des saints avec Dieu, et avec Jesus Christ, en leur attribuant une espece de sainteté qui ne convient qu’au souverain sanctificateur des ames, ou une efficace de conversion qui n’est propre qu’à celui qui est par sa mediation l’auteur et le consumateur de nostre salut. Preface au Panegyriques.

[g] See this passage of Bellarm. apud Hughes of the Invocat. of Saints,

us: they must remain secrets to all other beings who are exterior to us, unless made to them by some outward signs. God may communicate this knowledge to them upon particular occasions; but of themselves they cannot have it, nor can we collect by the light of reason, that he will make such communications to them. Now to offer up prayers to those whom we do not certainly know to hear them is absurd, especially when we know that God himself hears and is willing to receive them; and it is not only an absurd, but a presumptuous thing, because it implies an ascribing to creatures such powers and dignities as we have no warrant to ascribe to them, nor any just ground to believe they do enjoy; from reason, therefore, there is no foundation to think the practice of invoking saints departed to be lawful, but rather the contrary.

AND the same may be truly said of the Scriptures of the Old Testament; in which all the precepts and directions given for making of prayers, import, that they ought to be addressed to God, and that upon this general ground, that he doth hear them, and, therefore, to him *all flesh ought to come* [h]. The holy Scriptures further affirm, that to him alone belongs the knowledge of the heart, *Thou alone knowest the hearts of all the children of men* [i]; whereby is strongly implied that he doth not, ordinarily, communicate this knowledge to any creature.

IF there be nothing in the Scriptures of the Old Testament of any express particular prohibition against worshipping or praying to saints or angels, yet the general prohibition against having or worshipping any other God, besides the Lord Jehovah, was intended not only against the heathen false deities, but also against that of any other intermediate beings whatever between God and man. The practice of worshipping certain spiritual beings, originally of a nature between God and man, or the spirits of men departed this life, had been very ancient. And, at first, it was no more than desiring their protection, favour, and intercession; they were considered as subordinate officers appointed by the one supreme God to interpose in the concerns of mankind, and be the instruments of his providence towards them. This is the ac-

[h] PSAL. lxxv. 2.

[i] 2 CHRON. vi. 30.

count which Hesiod and Plato give of them, and seems to have by them been received from the Egyptians; and this continued to be all along the notion of men of sense, as we find by Celsus, Hierocles, and others.

BUT this practice of requesting their intercession and aid, as it was without any ground in reason, so it had a strong natural tendency to corrupt and debase the minds of the common people, to make them lose their notion of God as an infinitely powerful, eternal, and omnipresent spirit, and at length to conceive these mediators as deities nearly, if not quite, co-ordinate with him, who was, at first, regarded as supreme. It had actually this consequence, and in process of time introduced that gross idolatry which overspread the heathen world. There is great reason, therefore, to think that when God gave a law to the Israelites, who were encompassed with these idolaters, and, in it, forbade any other God to be worshiped besides himself, he must have intended to forbid the worship or religious invocation of the departed spirits, even of good men, or that of angels; in regard to the ill tendency which it might have in corrupting their notions and practice. This is made the more probable, by considering that the Jews never did practise any such invocation: no nation was ever more likely to fall into it than they were; for no one had ever a greater veneration for their ancestors and their prophets: indeed, the character and conduct of some of them, particularly of Abraham, Moses, and Elijah, were such as naturally to make it be thought they might be proper intercessors with God, to whom, while they were living, they had actually applied in that way with success and encouragement, on some great occasions; and yet, in the course of many hundred years, there is not one instance that such invocation of departed saints was ever practised among the Jews.

SOME Romanists have imagined, that the reason why the Jews forbore to do this, was, because they had not then any assurance that the souls of good men departed were in a state of sense and happiness, or that they enjoyed the vision of God. But that this was not the true reason we may justly conclude from their having likewise forbore to worship angels, who were known to be ministers of God, and in his presence in heaven. They had often appeared on occasions that might
naturally

naturally have led men to invoke them, and desire their intercession with God : such were the appearances of angels to *Manoah's wife* [k], and others. They had opportunities of speaking to these blessed spirits, who went from them directly up into heaven, and left them in circumstances that might seem particularly to have required their intercession and assistance. The prophet Zechariah saw an angel actually engaged in prayers for the people [l] : and yet upon none of these occasions is there the least mention that any religious worship was paid to them, or that their intercessions with God were desired. Now had there been any request or practice of this sort, the sacred writers certainly would not have omitted to mention them, either in the way of censure or of approbation, because they must have been facts of great moment in order to regulate the future practice of that people ; from all which considerations it is sufficiently evident, that there is no ground in the Old Testament for the invocation of saints departed, or of angels ; but rather that from thence there is reason to believe it unlawful.

AND the same thing may be shewn from the New Testament, with yet more evidence. Our blessed Lord enforces the precept, *Thou shalt worship the Lord thy God* (upon which it is probable the Jews thought themselves obliged, not to worship any saints or angels) by adding, *him only shalt thou serve* [m]. And having done this, without any express permission to worship or invoke saints or angels, he may justly be thought willing to confirm the notion the Jews had of the unlawfulness of such practices. Secondly, the New Testament declares, expressly, that *there is but one mediator between God and man, namely, Christ Jesus* [n] ; and that though there be that are called gods, many, and lords, many, yet that, that to Christians, *there is but one God the Father, and one Lord Jesus Christ, by whom are all things, and we by him* [o]. In the former of those passages St. Paul had been exhorting, that supplications, prayers, intercessions, and giving of thanks, should be made for all men. This might, naturally, have led him to mention the intercession of saints as proper also to be desired on their be-

[k] JUDGES xiii. 3.

[l] Chap. i. 12.

[m] MATT. iv. 10.

[n] 1 TIM. ii. 5.

[o] 1 COR. viii. 5, 6.

half: but to this effect there is not the least word or intimation. In the latter text, he is plainly speaking of the notion which the heathens had of many mediators, by which term they meant agents and intercessors between God and man; for they had no notion of mediators of redemption. In opposition, therefore, to their sense of the word, he must be understood to declare that there is, and out to be, but *one mediator between God and man, even Christ Jesus*. Agreeably to this, the same apostle cautions the Colossians, chap. ii. 18, 19, that they should not *suffer any man to beguile them of their reward, in a voluntary humility and worshiping of angels, intruding into those things which he hath not seen, vainly puffed up by his fleshly mind, and not holding the head, from which all the body by joints and bands having nourishment, ministered and knit together, increaseth with the increase of God* [p]. It is visible, in this passage, that the persons who did endeavour to seduce the Colossians to the worship of angels, were themselves professed Christians. For St. Paul would not have said, either of the Jews or of the Heathens, that they were in a voluntary humility, or that they intruded into the things they had not seen, and did not hold the head, even Jesus Christ. Such expressions would have been improper and absurd, if applied to the professed enemies of the gospel. The seducers must therefore have been Christians, and, by consequence, such as did not worship angels with the highest kind of worship; for as that idolatrous practice would have been quite inconsistent with their profession, St. Paul, therefore, would have spoke it with much sharper resentment than he does. Now if these seducers were Christians, and

[p] St. Chrysostom, on the Epist. to the Colossians, S. i. p. 90, saith, it was the chief design of that epistle, to beat down the error of them who made addresses to God by angels. And S. vi. p. 123, he saith, there were some who said we must come to God by angels, not immediatly by Christ, for that is too high for us.

This error, saith Theodoret, upon the text, remained long among the people of Colossæ, and the adjacent countries; and for that cause a council met at Laodicea, a city about twenty miles from Colossæ, and made a canon against praying to angels. It is the 35th canon of that council. This, saith the canon, the council ordain to be done, namely, that men should not pray to angels pretending humility, and saying; that the God of all things is invisible, inaccessible, and incomprehensible, and that it was fit we should procure God's favour by means of angels. See Theod. on the Epist. to the Colossians. See the Laodicean can. in Johnson's Vade mecum, vol. ii. p. 114, and Bever Pandect.

Bishop Stillingfleet's Posth. works, p. 299, says, that this canon of the Laodicean council having been admitted into the Codex canonum of the universal church, hath the same force as if it had been made in a general council.

did not worship angels with the highest kind of worship, it then follows, that they were in the case of the members of the church of Rome, at present; that is to say, they did nothing more than invoke angels for their intercession with God, and for their assistance and protection by virtue of his appointment; and in doing this they were either negligent as to addressing themselves to Jesus Christ; or thinking it a thing more than they were intitled to, to address themselves directly to the Father or to him; they, therefore, applied to the angels that they might present their prayers to God.

BUT whatever their notion was, the apostle takes occasion from it to make a general declaration against any religious worship that should be paid to angels; in which declaration since he makes no exception in favour of the practice of invoking them as patrons or intercessors with God (which he must very well know if it was then usual) we may conclude, that he intended to condemn any such practice: in order to impress this more forcibly upon the minds of Christians, St. John was not suffered to pay even such worship or respect to an angel, as the high dignity and excellency of such a spirit might otherwise have naturally required; he was twice commanded to *worship God*, i. e. *him only* [q].

BUT if it was not allowable to worship angels, it may, with more reason, be concluded that departed saints are not to be worshiped; because, whatever reason holds against worshiping angels, holds at least as strongly against worshiping saints departed. And there is one other circumstance peculiarly strong against the latter; namely, there is no sufficient ground either from reason or the Scripture to believe that they are acquainted with our affairs, that they can always hear our vocal, or, at least, ever be acquainted with our mental petitions. The Romish school-men, indeed, have imagined a way by which they hold the saints to see all things, viz. in the essence of God, as in a mirror: but as this is a fiction intirely without any foundation in reason or the holy Scripture, no stress at all can be laid upon it.

THE proofs which some Romish writers draw from the Apocalypse of St. John, are of as little weight; because the representations in that

[q] REV. xxii. 9.

book are mostly emblematical, and not intended to express the reality of things, as they are in heaven, but to denote the condition and future distresses of the church on earth. This is particularly true with regard to the souls represented as being *under the altar* [r], as to the *angles offering incense upon it* [s], and to several other circumstances from which the Romanists argue; which arguments, therefore, are of no avail. Now this is one proof that God does not design that we should pray to saints, since he has not given us reason to believe that they have such a knowledge of our affairs as is a necessary foundation for our addresses to them: and when this is added to what is declared expressly in the Scripture against worshiping even angels, the proofs of the unlawfulness of both of them are so strong, that no Christian ought to think himself warranted to practise them, but rather to be under a strong prohibition of so doing.

IN regard to the worship of images, the Romans excuse themselves from the charge of idolatry, by affirming that they do not believe there is any virtue in them, on account of which they ought to be adored, but that using them chiefly as memorials, they only give them a proper veneration or respect for the sake of the persons they represent, and to whom this veneration is referred. It would require too much room in these papers to produce all the reasons and facts that appear to prove the contrary to what is here alleged, with regard, at least, to the common people in the church of Rome. And there is the less need of doing this, because you will best judge of these matters by what you see in the country where you are, and what you may observe more when you get into Italy. In the mean time, it is probable, some of the more learned and moderate of the Roman Catholics, may not have the same notion of images, nor practice towards them as the common people do; by consequence the former may not be chargeable with idolatry with regard to them: and as my design at present is, chiefly, to remark those doctrines and practices which are enjoined by the church of Rome to all in her communion, which must be believed and practised by all, and which, therefore, are the necessary reasons for our keeping separate from her communion; I have, therefore, selected only those

[r] REV. vi. 9.

[s] REV. viii. 3.

which have been mentioned; namely, transubstantiation, the adoration, and the sacrifice in the mass, the communion in one kind only, and the invocation and worship of saints and angels. No one can deny these to be the avowed and general practices of that church, and what she imposes upon all her members. At the same time, I hope, I have plainly shewn, that all these practices are utterly unlawful; and, therefore, are just and necessary reasons for which our ancestors departed, and we remain separate from her communion.

BUT in order to invalidate this conclusion, the writers of the church of Rome object, that most of these practices which we condemn, were, for several ages, universal through all Christendom. There was no visible church on earth but what complied with them: from whence, they say, it follows that those practices cannot be, as we pretend, idolatrous and unlawful. For if they were so, then there could not have been any salvation attainable in those churches, since idolatry is a crime inconsistent with salvation; and if no salvation could have been attainable in the church, then the church must have failed in those times; for a society in which none could be saved, could not properly be a church of Christ; and if the church failed at any time, then Christ did not make good his promise to it, that it should always exist, or, that *the gates of hell should not prevail against it* [t]. But this consequence, say they, is not to be admitted: no Christian can allow that the promise of Christ hath failed; therefore, the above-mentioned practices must certainly be innocent. It is a calumny in us to charge them as unlawful; therefore, it must also be further admitted, that we Protestants cannot be justified for separating ourselves from the church of Rome, on account of practices not unlawful. We must be schismatics in that respect.

IN answer to this argument, several learned writers among the Protestants have applied themselves to shew the falshood of the first position upon which it is grounded; to wit, the universal prevalence of the practices in question, at any one time, throughout the whole Christian church. And they have sufficiently proved, that the practice of adoring the host, which is the grossest part of the Romish idolatry,

[t] MATT. xvi. 18.

did not obtain in several churches; particularly not in that of Æthiopia. These authors have likewise made it in some degree probable, that there were all along some churches in the Vallies situate among the mountains that divide Italy from France, which were not only clear from the practice of adoring the host, but even from that of invoking and worshiping saints and angels.

It is true that the persecutions which those churches have suffered at different times, have so far destroyed their authentic writings, that we have hardly remains enough of them to clear the history of their constant succession beyond dispute. We are forced to derive our accounts of them chiefly from their inveterate enemies, who endeavoured, as much as they could, not only to destroy, but to calumniate and blacken them. Yet, even from the accounts of these enemies compared together, there is some probability that God preserved a number of persons in those countries who were not guilty of any idolatrous practices, who did not either adore the host, or worship angels, or saints departed, as the church of Rome does. The noted testimony of Renier, who was himself an inquisitor and persecutor of them, is much to their advantage [u]. “ Among all the sects (says he) that either now are or have been, there is no one more pernicious to the church than that of the Lionois. First, because it has been more lasting than any other; for some say it hath continued from the time of pope Sylvester, and some from the time of the apostles. Secondly, because it is more general; for there is hardly any country in which there are not some persons of this sect. Thirdly, because, as all other sects give horror to those that hear them by the shockingness of their blasphemies against God, this of the Lionois hath a great shew of piety.” Thus Renier. And there are many other passages in the historians of those times, by which these Vaudois may, with great probability, be vindicated from the aspersions and calumnies thrown upon them. Though, perhaps, in an unlearned age,

[u] Inter omnes sectas, quæ adhuc sunt vel fuerunt, non est perniciosior ecclesiæ quam Leonistarum. Primo, quia est diuturnior: aliqui enim dicunt quod duraverit a tempore Silvestri, aliqui a tempore apostolorum. Secundo, quia est generalior; fere enim nulla est terra in qua hæc secta non sit. Tertio, quia cum aliæ sectæ immanitate blasphemiarum in Deum audientibus horrorem incutiant, hæc Leonistarum magnam habet specie[m] pietatis. Bibl. Patr. tom. iv. partii. p. 746.

they might not be right in all their opinions, yet they were in great measure clear from those gross corruptions in worship that I have mentioned, and were pure to an eminent degree in their morals. However, I shall not give you the trouble of long historical disquisitions about clearing the character or succession of these churches; because it plainly is not incumbent upon us Protestants to prove, that there were, at all times, some churches in being that were clear of the corruptions that have been here mentioned. On the contrary, the Romanists are visibly obliged, for the support of their argument against us, to give clear proof that all Christians, in every age, were actually involved in them. Now this the Romanists can never do, unless they were acquainted with the religious state of all Christians upon earth, in every age since our Saviour; which they cannot, with any shew of reason, pretend to have been: there might be numbers of Christians in divers places of Asia, of Africa, and even of Europe, unknown both to them and us, who were not involved in these corruptions of worship. If they were not any where spread through large tracts of country, so as to draw the observation of persons at a distance upon them, their fewness and obscurity did not make them incapable of being parts of the true church of Christ. The Romanists must, and many of them do, allow that numerosness is not a necessary circumstance to that purpose. Now since it is certain that the Romanists cannot prove, that there never were any societies of Christians but what were involved in the corruptions that have been here specified, it follows, that their argument, raised upon that supposition, is utterly invalid; and our proofs against those corruptions, drawn from reason and the holy Scripture, remain in their full force. Those practices are certainly very sinful, and even damnable in their own nature.

HOWEVER, we do not represent this consequence as taking place in its strictness with regard to all persons in the Romish communion. We do not account all persons who have been or are involved in those corruptions to be, on that account, incapable of salvation. We have, on the contrary, reasonable hopes that many such persons who are sincere in their errors, as not having had either abilities or opportunities, humanly speaking, of knowing better, may and will, by the mercy of God, be saved eternally. Accordingly, we make no scruple of ac-

knowledging, that, even during the time that those corruptions were most prevalent, and generally spread over Europe, the churches which practised them, having, at the same time, many Christians in their communion who were thus sincerely ignorant of the truth, and thereby capable of eternal salvation, were on that account real, though corrupted, churches of Christ; and that they retained, though a corrupted, yet still a duly commissioned, ministry, which, therefore, we made no difficulty of deriving from them.

BUT yet, since those corrupt practices above-mentioned were certainly unlawful in their own nature, and consequently not consistent with salvation, in any persons, who either did or might, if they had properly endeavoured it, have known them to be so, and yet persisted in them: it follows that they always were, and, at present, are, a necessary cause of separating from that church, to all persons who could have discovered them to be unlawful, or can do so at present. Nothing, therefore, can be more groundless than the argument sometimes used by Romanists to Protestants [w], viz. That we allow men may be saved in their communion; but they do not allow that any can be saved in ours, and therefore their communion is to be chosen as the safest. In this argument they either mistake or misrepresent the concession we make. We only allow that those persons who, morally speaking, are not in circumstances to know better may be saved (through their involuntary and well-meaning ignorance) in their communion. But to those of that church who have, at any time, sufficient capacity and opportunity to know better, and do not make use of them to acquire such knowledge, or act according to it, but either remain in the communion of the church of Rome, or go over to it; to such persons, I say, we dare not give any hopes of salvation. We advise them to come out of Babylon, lest they be partakers of her plagues; and what hath been said in these preceding papers is sufficient to prove that this advice is good.

[w] See Polnitz's Memoirs, who observes that this argument had the greatest weight in converting Henry IV. of France; and that it was also employed with success in converting the late duke of Brunswick, and his daughter, afterwards married to the late emperor.

FROM what has been here proved concerning the present terms of communion in the church of Rome, it is plain, that while they continue as they are, the bishop of that see cannot have just claim to any spiritual authority or jurisdiction over this realm. For by his having excommunicated all Christians, who will not comply with them, he really makes himself and his adherents guilty of schism; and as long as he is so, he certainly cannot have any spiritual authority over those Christians who, during that time, are not of his church.

SOME Protestants, indeed, of learning and rank [x], have seemed to think that if the church of Rome should ever hereafter make the terms of her communion such as might be complied with, the bishop of that see would then have a just claim to be restored to his ancient authority, as patriarch of the west, over all the churches that formerly were subject to his direction, and over Great Britain among the rest.

BUT it is necessary to be observed, that this is not the sense of our national laws; which do, on the contrary, expressly affirm, and require all persons in any office ecclesiastical, civil, or military, to declare, "That no foreign prince, person, prelate, state, or potentate whatsoever hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm." Which words, so very strong and universal as they are, exclude the pretensions in the church of Rome to any spiritual authority over us [y], both now, and in all times and cases whatsoever; so that in order to

[x] King James I. acknowledgeth the pope to be patriarch of the west, i. e. head of the general council of the western church. And Thomas, lord bishop of Winchester, under Queen Elizabeth, being demanded why we own him not so in effect, answered bluntly, but truly, Because he is not content with the right of a patriarch: for should he disclaim the pretence of dissolving the bond of allegiance, should he retire to the privileges of a patriarch, in seeing the canons executed; the schism would lie at our door, if we should refuse it. Thorndike's due way of Composing Differences, p. 7. in his fifth part of Church Government, p. 213.

Dr. Cosins, bishop of Durham, said, that we are to accord with the Roman Catholics in acknowledgment of the bishop of Rome, if he would rule and be ruled by the canons of the church, to be patriarch of the west by right of ecclesiastical and imperial constitution, in such places where the kings and governors of those places had received him, and found it behooful for them to make use of his jurisdiction, without any necessary dependence upon him by divine right. Cosins, bishop of Durham, at the end of bishop Bull's answer to the bishop of Meaux.

[y] The great body of our clergy in their convocations, and the divines of both our universities, in the reign of Henry VIIIth, declared solemnly to the public, "that the pope of Rome had no greater jurisdiction committed to him by God in the Scripture, over this realm of England than any other bishop." See Oxford Theses.

a full vindication of our present establishment, and of the liberty we now enjoy under it, we are obliged to examine the grounds from the holy Scripture, and the constitutions of the primitive or ancient Christian church, confirmed by long usage, in virtue of which the church of Rome pretends to have any spiritual authority over us. By doing this, you will be led to see what the state of this nation was, as to its ecclesiastical subjection, in the days of our ancestors, and to be more fully convinced, as well of the right as the great happiness of our present liberty in that respect.

THE bishops of Rome in claiming a right derived from the holy Scripture of spiritual authority over the whole church of Christ, and consequently over the British churches among others, make two suppositions as the grounds of this right; namely,

FIRST, that by the institution of our blessed Saviour, the apostle St. Peter was vested with a supremacy over the whole church of Christ.

SECONDLY, that our Lord intended that after St. Peter's death, all the bishops of Rome, in succession, should be vested with the like authority.

BEFORE I examine particularly what arguments they bring in proof of these suppositions, I must observe in general, that this authority, ascribed to the pope, is a matter of such importance, that, if it were true, we might justly expect to find in the holy Scriptures very full and plain declarations about it: because it greatly concerns the religious practice of all Christians, who must be very blameable, if they refuse or neglect to pay the submission that is due to the spiritual pastors designed to guide and govern them in the way to salvation: when yet they have no other way of knowing what authority belongs to those pastors, except by divine revelation only. But that no such positive or clear instructions were ever given by our Saviour about the governing superiority of St. Peter over the other apostles, we may, in the first place, collect from the silence of the Scripture on several remarkable occasions, when such declarations from our Saviour might justly have been expected. One such occasion was the dispute that arose among the apostles who of them should be the greatest [z]. It

[z] MARK ix. 34.

is not conceivable that such a dispute could have been, had they known that our Lord had appointed Peter to be their spiritual governor. But if it should be thought possible, that in the warmth of their ambition, they should have forgotten our Lord's directions upon that subject, yet it is not to be conceived that our Lord himself should not have taken this occasion to repeat and reinforce them on their minds, when their acquiescence about them would be of very great importance to the peace of his church, and to the regular propagation and subsistence of his religion in the world. It would have been very natural that our Lord, after having reproved their ambition, and declared what superiority they ought not to affect, should have mentioned somewhat about that authority which he did intend to vest in St. Peter. But of this not a word is said, nor the least intimation given by any of the evangelists; not even by St. Luke, who places one of these disputes on the same day when our Saviour was seized by the Jews. Instead of then mentioning any thing of St. Peter's peculiar superiority, our Lord promises all the apostles that they should *sit on thrones judging the twelve tribes of Israel* [a], without intimating that there should be any difference in the dignity or authority of any of those thrones. This might be naturally taken to imply, that there should not be any difference between them while on earth as to their spiritual authority.

It is true, that Peter had always some distinction shewn to him by our Saviour, and some precedency among the apostles for reasons, with which we are not well acquainted. But our Lord's treating him with this personal regard, was a thing far different from appointing him to be a governor or superintendent over the apostles themselves in spiritual matters. Had he intended to have done this, he would certainly have declared and specified the nature of that office, as far as would have been necessary; as it must have been in some degree, because it was a matter intirely new, and the extent of it not to be discovered by natural reason. But our Lord's silence is not the only argument for his not intending to grant such a supremacy to St. Peter. The same thing may be inferred, from his having actually given the highest spiritual powers requisite to the founding and governing a church, to all the

[a] MATT. xix. 28.

apostles alike. This he evidently did, when he first sent them out to preach the gospel [b], when he gave them the power of binding and loosing [c], and, afterwards, when he gave them the power of *forgiving sins* [d]. He told them all alike that *he would be with them to the end of the world* [e], and that they should all be baptized, that is, should receive the *power of the Holy Ghost* [f], which was to guide them into *all truth* [g], and to be endued *with power*, i. e. miraculous power *from on high* [h]. Accordingly on the day of pentecost [i] the appearance of a tongue of fire sat, without distinction, upon each of them; and ver. 4. they were all filled with the holy spirit, and spake with tongues, and ver. 42, 43, they all taught and did miracles.

ACCORDING to the powers thus equally conferred, the apostles, after our Lord's decease, plainly acted upon a foot of equality among themselves, as we see by what passed in the assembly of apostles and elders at Jerusalem upon the question about circumcising the Gentile converts [k]. St. James then spoke with as much appearance of authority as St. Peter, and the decree was made in the name of all the apostles, elders, and brethren, ver. 23, without any particular mention or distinction of St. Peter, which would never have been omitted, had he been known to be a spiritual governor among them.

NOR did St. Peter, or they, on other occasions, either say, or do, any thing, from which such his authority could justly be inferred. The office of a church-governor would probably have consisted in determining where churches should be formed, and to whom they should be committed, what method and order should be used in divine service, what forms and times of prayer, what compliances should be used in regard to the prejudices of the Jews and Gentiles; it would have been exerted by his inflicting censures himself, and receiving appeals from others, with various such points; and if St. Peter had been known to be a church-governor, applications of this sort must have been made to him. He must have taken occasion to shew and exert his governing character and authority; but he neither did any thing of this nature himself, nor did the other apostles, in any part of their

[b] MATT. x. 1. MARK vi. 7. LUKE ix. 1. [c] MATT. xviii. 18. [d] JOHN xx. 23.
[e] MATT. xxviii. 19. [f] ACTS i. 5. LUKE iii. 16. [g] JOHN xvi. 13. [h] LUKE
xxiv. 49. [i] ACTS ii. 3. [k] ACTS xv.

conduct, at all acknowledge or intimate that they were subordinate to, or dependent upon, him. St. Paul, when, Eph. iv. 7. he is enumerating the persons to whom God had committed the government of the church, says nothing of any governor in chief; on the contrary, he declares that he himself was no way inferior [l] to St. Peter, St. James, or the chief of the apostles. And, indeed, he was so far from shewing any submission to St. Peter, that in regard to the conduct to be observed towards the Gentile converts [m], he withstood him to his face, and openly reprov'd him before all. This behaviour of St. Paul, without any mention of, or salvo to, St. Peter's supremacy, would have been not compatible with it; and therefore, since nothing was said of it on this trying occasion, either by St. Peter, or by any other person, we justly conclude that Peter had not really any such supremacy.

THESE are considerations of such moment against the Romish claim of it, that the arguments ought to be very strong in order to outweigh them. Let us then examine what arguments the Romanists allege for this purpose.

ONE of them is drawn from Matt. xvi. 18, where our Lord calls Peter a rock, and *upon this rock*, he says, *I will build my church*. This, according to the Romanists, imports, that he would make him a spiritual governor as well over the apostles themselves, as over all other Christians. But this cannot be inferred, either from the circumstances in which this promise was made, or the terms in which it was expressed; it was made on occasion of St. Peter's having professed his belief, that *Jesus was the Son of God*, ver. 16. This confession, probably, all the other apostles were ready to have made as well as he; for they all had actually made the same before on another occasion [n]. And; therefore, his making it now could hardly be a reason for our Lord to confer so peculiar an authority upon him. Indeed, as he spoke in the name of the rest, he was, in some measure, distinguished from them; and, therefore, our Lord alluding to his name, signifying a rock, mentions only him as being designed for a foundation to his church. But, that the other apostles also were meant to be joined with him in this foundation, appears from St. Paul's having said [o], that the

[l] 2 COR. xi. 5.

[m] GAL. ii. 11, 14.

[n] MATT. xix. 33.

[o] EPH. ii. 20.

church was built upon the apostles in the plural number; and withal upon the prophets, which latter expression shews, that it was to be built upon the doctrine or preaching of the apostles; and the spiritual Jerusalem [p], or church of Christ, is represented as a wall having twelve foundations, upon which were written the names of the twelve apostles of the Lamb. This implies, that the church was built equally on them all.

AGAIN, the Romanists allege, that our Saviour promised to give to Peter the *keys of the kingdom of heaven* [q], which same promise he did not make to any of the other apostles. Now it is true, that this promise was not made in the very same terms to any of them; but all the same powers that were contained in it, were granted as fully to them as to him. The metaphor of the keys signified a commission to preach the gospel, to declare the terms of salvation, to admit believers into the church by baptism, with authority also to exclude them, when they believe or act amiss, from the visible communion of it, by spiritual censures rightly inflicted, and to restore them again upon their repentance. Now, probably, all these powers were contained in that of binding and loosing, which signified what Peter was to do with the keys. See Whitby, Com. vol. i. p. 149. And this power of binding and loosing was conferred upon all the apostles as well as on Peter [r]. The only circumstance that seems intended to be peculiar to Peter was, that he was to have the honour of first preaching the gospel to the Gentiles, as he did to Cornelius and his friends [s].

ANOTHER passage alledged for St. Peter's supremacy is where our Lord said to Peter only, *Feed my lambs, and my sheep* [t]. From whence the Romanists infer, that he had a superior and peculiar commission given him to that purpose. But this is in no degree probable, since the other apostles had all the spiritual powers requisite for that purpose as well as Peter. The words were, in all appearance, meant only as an exhortation to him as representative of the rest, that they should all discharge the great duty of feeding the church. Though, probably, Peter's having thrice denied our Lord just before, might occasion this charge to be more particularly addressed to him.

[p] APOC. xxi. 10, 14.

[q] MATT. xvi. 19.

[r] MATT. xviii. 18.

[s] ACTS x. 24.

[t] JOHN xxi. 15.

THE Romanists insist further upon the 32d verse of the 22d chap. of St. Luke's gospel, wherein our Saviour tells Peter, that he had prayed for him, that his faith might not fail. This does not imply, that his faith should not actually fail, but rather the possibility and danger that it might; and how does this imply the grant of authority?

THESE preceding texts, which are all the Romanists offer, are far from proving any governing superiority of St. Peter over the other apostles. But if there had been any such in St. Peter himself, how would it follow, that it was to be continued in any other person, not an apostle, after Peter's death, especially in the bishops of Rome in succession? There is not the least intimation of this in the holy Scripture, which, in a matter of such importance, would certainly have been given in order to prevent disputes, &c.

BUT the silence of the Scripture is not the only argument against the divine institution of a primacy, which the Romanists contend for in the bishop of Rome as successor of St. Peter. They affirm, that, in virtue of succeeding to this primacy of St. Peter, the bishop of Rome hath a divine right of singular and peculiar inspection over the whole church, of taking care that the other bishops, in all parts of it, should keep to the true faith, and observe the canons—of censuring the transgressors, of summoning the other bishops to councils when he sees necessary, and of excommunicating them if they refuse to come. But would Christ or his apostles have instituted such a primacy in the see of Rome with design that it should be of perpetual continuance, without giving any notice or intimation of it in the Scripture, especially, when there does not, in the reason of things, appear any necessity, or even expediency, for such an institution? The reason given by some, viz. “that the primacy of the bishop of Rome was intended to express the unity of the priesthood, or episcopacy, and that he was designed to be as a center of union among them,” seems to be, if at all intelligible, yet, at least, not of sufficient weight in such a case.

BUT without enlarging much in confuting these reasons, there is a decisive argument against the divine institution of such a primacy in the bishop of Rome, or any other. It is, that, if there had been such a divine institution of the primacy, it must have been designed to re-

main perpetually, whatever circumstances that church might come to be in. But this could not be our Lord's intention, for he declared that *his kingdom was not of this world* [u], i. e. he did not intend to break in upon the right or authority of the civil sovereigns. But this he must have done, had he instituted such a primacy to remain in the see of Rome; for it might easily happen, that some of the bishops whom the bishop of Rome, in virtue of his primacy, might call to his council, might be subjects of different sovereigns, who might forbid their bishops to go to the bishop of Rome's council. In this case, the bishops, if they obeyed their primate of Rome, must be under a necessity of disobeying their civil sovereign. But such a breach on the authority of civil sovereigns there is no reason to think our Saviour intended to make, as it was not necessary to the subsistence of his religion in the world, and was contrary to his own declaration about the nature of his kingdom. He could not, therefore, institute a primacy of such a nature as the Romanists pretend, either in the church of Rome, or in any other.

WHATEVER precedence or superiority the bishop of Rome obtained over other bishops, must have been derived wholly from human appointment, either ecclesiastical or civil, or both together. And there was, indeed, an expediency that some order or precedence should be settled among the Christian bishops. When converts were made, to any considerable number, in any city, a bishop with Presbyters were set over them in things spiritual, for the care, instruction, and government of them. And it was expedient that, when these particular churches grew to be numerous in a province, they should not be quite independent of each other, which would have been greatly to their disadvantage, encompassed as they were with persecuting enemies. It might be even needful, that the governors of them should sometimes meet together, in order to mutual advice, support, and consolation, and for the preservation of due order and discipline among them. In these meetings it was necessary that some precedence should be settled among the bishops; and this precedence was naturally

[u] JOHN xviii. 36.

given to those bishops who presided over the Christians in the greater cities of the several provinces: one such city there was in each province, in which a Roman governor resided and administered justice, &c. on account of which circumstance there was greater resort of all persons to it, and it was accounted of greater dignity. To the bishop of this city it was thought proper to give the precedency among the bishops of the province; he was appointed to preside in their provincial meetings for consultation and dispatch of the business that arose in or concerned the particular churches of the province. To him, as metropolitan, with the other bishops of the province, an appeal lay from the bishop and consistory of each church: and he, with their consent and assistance, had the right of ordaining particular bishops, and installing them, after they had been elected or approved by the people of their particular churches. This plan of government obtained pretty early in the church; some traces of it appear in the second century; and if it had been duly and regularly adhered to it might have been very conducive to produce good effects. But this was prevented by the disproportioned exaltation of the bishop of Rome above all the rest. Several circumstances contributed to this exaltation: that bishoprick had been founded by the two chief apostles, St. Peter and St. Paul, who both are said to have suffered martyrdom there; and the faith which they had planted was, in the first ages, well preserved in that church, of which also many of the earliest bishops had likewise died for the faith of Christ. On these accounts a good deal of respect was paid to it; but the thing that contributed most to the great increase of its dignity, power, and influence was the super-eminent grandeur of Rome, the most potent and wealthy city then in the world, and the seat of almost universal empire. The bishop there being at the head of a numerous church, the oblations and other revenues from the people were so large, as to be sufficient for the maintenance of a number of clergy after the empire became Christian, and afforded funds for the hospitable reception of any bishops or clergy that came thither in distress from other places, even during the times of persecution. The bishops of that city having the easiest access to the emperors and their ministers, had accordingly a proportionable influence

in

in many affairs. As there was the greatest resort to that city, of Christians as well as others, from all parts of the empire, he had the best opportunities of knowing the state of the churches in all the provinces; he had information how the faith and the discipline was generally observed, on which account he was frequently consulted by other bishops, and sent them directions about various points: and the bishops of that see, after having been for some time used to do this, by degrees claimed a right to do it, to give their arbitrations and decisions in points of difference between bishops, and required a submission to them. They took it ill that any churches should differ from theirs in any circumstance of the worship. Pope Victor proceeded so far as to excommunicate the eastern churches for not observing Easter as the church of Rome did. Pope Stephen quarrelled with the churches of Africa and others, for rebaptizing those who had been baptized by heretics; and, at length, that church pretended to have the final judgment and decision of all affairs upon appeals that were to be made to them from all parts of the church. And though these encroachments, where they had no real authority, were not taken well by the churches or persons concerned, who charged them with pride and usurpation (as St. Basil, Firmilian, and St. Cyprian) yet they were countenanced and supported in these practices by the council of Sardica, which granted them authority to order a rehearing after the sentence of a provincial council, in some cases, even beyond the bounds of those that were called the Suburbicary Churches, which were all that were at first under the jurisdiction of the bishop of Rome, considered only as a metropolitan. These proceedings of the popes were farther supported by a law made by the emperor Gratian, A. D. 378, 379, in which he declares, that “ whatever bishop is condemned by the judgment of pope Damasus, assisted by six or seven bishops, and yet persists to retain his see, shall be forced by the proper civil officers, to repair to Rome, under prosecution, &c.”

AND the pope called St. Leo, in A. D. 448, obtained a yet stronger rescript from the emperor Valentinian the III^d, against Hilary bishop of Arles, by whom he was opposed.

INDEED,

INDEED, it is true, even after this law, that pope Zozimus and others were strongly opposed by the council of Carthage, at which St. Austin was present, and many other bishops, who would not submit to the demand of the bishop of Rome, that he might be appealed to after a judgment passed by a provincial council; and wrote a sharp letter to him, now extant, remonstrating the groundlessness and iniquity of his proceeding.

BUT that unhappy church was soon after ruined by the irruption of the Vandals, and the church of Arles in France was forced to submit, as that of Milan in Italy had done before, to the authority of the pope; which went on increasing, till, by the donation of the temporal patrimony of St. Peter, and the other support that she received from Pepin and his son Charlemagne, it became above any ecclesiastical opposition or controul; pretending that both as successor of St. Peter, and by the sanction of temporal authority of the Roman emperor, the pope was at the head of all ecclesiastical affairs, and might judge of and determine them as he thought fit.

Now though the canons of the church alone might not be sufficient to give him such a right, yet, perhaps, the imperial laws might do it, in regard that the emperor had made the civil establishment. But then it is also true, that those imperial laws were no longer in force for this purpose than the empire itself subsisted. When that was broke in pieces, the several kings of the kingdoms, which rose out of its ruins, might have made what alterations and abridgments they thought fit in the bishop of Rome's ecclesiastical authority, in their respective dominions. But none of these princes did any thing of moment in this matter; most of them were too ignorant and superstitious: they, in general, submitted to the claims the bishops of Rome made to an authority, not only of settling articles of faith, and of judging of every thing done in opposition to them, but every thing that related to religious worship and discipline, and to all transgressions relating to them, by clergymen, and even by laymen every where. They claimed a right to nominate bishops, and to fix the extent of their dioceses, and even to dispose of the revenues of them. To give exemptions from their authority, in favour of other religious foundations of their

own making or approving, and to oblige the subjects of the several sovereigns to go out of their dominions, to councils. We see instances of all these things in the time of our Saxon kings, who hardly opposed them in any thing, except in the case of archbishop Wilfrid, and even in that the see of Rome at length carried its point. William the Conqueror, indeed, though favoured in his enterprise against this nation by the pope of Rome, yet shewed a spirit or disposition to resist, if there should be occasion; and his son and successor William Rufus yet more, in his contests with archbishop Anselm. But Henry I, on account of his disputable title to the crown, was forced to give way; and Stephen also, who for the same reason was obliged to submit to the insolence of the pope's legate. But Henry II, having a better title, and as good a spirit, contended strongly with archbishop Becket, about the articles of Clarendon, and for a time gained his point; though, after the death of archbishop Becket, which the pope imputed to him, he was forced to give them up again and undergo a shameful penance. His son John was still more hardly used, being himself excommunicated, and the realm put under an interdict by the pope, till the king submitted to resign his crown, and made it tributary to the pope. And his son Henry III. suffered all the clergy to be made so, to an extremely oppressive degree. They could hardly live upon their spiritual incomes, so reduced as they were by payments to Rome, and the best of the preferments the pope disposed of to bishops and others of his own court, who never resided, nor, if they had, did they know any thing of the language, so that they were unable to instruct the people, who were at once deprived of their spiritual food and of their temporal wealth. We find doleful complaints of these oppressions and abuses in Matt. Paris. But in that reign the nation began to be in some degree sensible of them, and their devotion and affection to the see of Rome began to decrease. Some gentlemen combined, and made a general seizure and spoil of all the effects that belonged to the Italians, which, though Henry III. disavowed, yet he was thought to have connived at it. But so terrible was the power of the pope at that time, on account of what he had done to other princes, that this timid king owned he dared not oppose it. However,

ever, happily for this nation his son Edward I. was of a different spirit. When the pope had forbid the clergy to contribute any thing to the public service, and they were superstitious enough to obey him rather than the king, the latter locked up all their barns, and, soon after, holding a parliament without them, he put them out of his protection. He made one of his subjects abjure the realm for bringing in a bull of excommunication from the pope against another subject. Coke 5th Rep. He seized the temporalities of the archbishop of York, for not admitting a clerk into a benefice which the pope had before filled by provision; and, in the 25th of this reign, a statute was made against the pope's giving benefices to aliens.

BUT the statutes above-mentioned were less effectual than they ought to have been, by the connivances of our kings at the non-execution of them; so that still appeals to Rome were prosecuted with great expence, delay, and vexation to the subject: great sums went out of the kingdom for bulls, dispensations, &c. from Rome: many strangers were permitted to enjoy, and be non-resident upon benefices here, to the great damage of the people; the pope's legates were permitted to enter and exercise judicial power, and they, with the Monks, were the great occasions of the rigorous proceedings against heretics, on all occasions.

THESE things, if they had been the only ones, were so great grievances, that the nation had a right to reform them, and to throw off all correspondence with the pope of Rome if he refused to consent to it.

BUT, as I have shewn in the first and in the present tract, there were other yet stronger reasons which obliged us to leave the communion of that church, when we saw it persisted to impose on us the belief and practice of some things utterly unlawful. Our separation from it was then both lawful and necessary, and we are still under a strong obligation to continue it while the terms of her communion remain as they are. And, even though they should be altered so as that we might lawfully comply with them, yet, I have shewn, we should be under no obligation of so doing; because the authority which that see exercised anciently over this kingdom, having no foun-

dation in the scripture, stood only upon ecclesiastical canons or customs, or imperial edicts, which were no longer obligatory to this nation, than we thought fit to admit them: and as we are now happily delivered from them, we have great reason to stand fast in the liberty with which the Divine Providence has made us free, and not be again entangled with that yoke of bondage which was so long heavy upon our deluded ancestors.

TRACT

TRACT V.

An answer to the objections to the ill use which, it is alleged, has been made of the liberty we have gained by having broke with the See of Rome.

THE reasons which induced the king and parliament of England to throw off the yoke of the See of Rome, and resume the Christian liberty of judging in all matters of religion, have been shewn in the foregoing tracts. It is requisite now, that answers should be given to those objections that have been suggested by the abbot of L—— and others of his church, concerning the ill use we have made of the liberty we gained, by having broke with the See of Rome. In the first place then they charge us with sacrilege for having taken away the lands and tithes that have been consecrated to God, and for still retaining them in lay-hands. They allege, that it is plainly a dictate of natural reason, that men may consecrate things to the more particular service of God. As being the maker and preserver of the world, and lord paramount of all things in it, he needs no donation to make any thing his; yet, as he has given the temporary use of them to mankind, therefore when they devote and solemnly set apart any of the things, which by his gift are theirs, to his honour and service, he may, by such donations, be conceived to acquire, as it were, a new property in them, which he may be willing to accept and retain. That he would do this, all nations have thought: to this purpose Seneca very well says, that all things indeed belong to the gods, but all are not dedicated to them: sacrilege has place in those things only, which religion has appropriated to the Deity [a]. And this general belief of mankind is confirmed by many passages of the holy scripture [b]. Upon these grounds the scripture considers the taking away things thus consecrated to God, as a robbing of God; and reckons it to be a crime not less heinous than idolatry. Now the lands and tithes of which the church of England was deprived at the

[a] Sacrum sacrove commendatum qui clepserit rapseritque, parricida esto. Cic. de Legg. lib. ii.

[b] 1 SAM. i. 11. 1 CHRON. xxix. 14. MALACHI iii. 8. PROV. xx. 25.

pretended Reformation, had been with the greatest solemnity devoted to God by those persons who had a full right to do it. This appears from all our historians, and our lawyers acknowledge it; and therefore the taking them away from the church was plainly sacrilegious, and utterly indefensible: nothing but repentance and restitution to the utmost of our power will procure the pardon of this national sin. In answer to this charge, thus made by Romish authors, we freely allow, that things may be consecrated to God, as well under the gospel as under the natural or Mosaic law; and that the donors of church lands and tithes, who made those donations with due solemnity, had an intention of devoting the things to God's service for perpetuity; but we deny that all things so consecrated to God, do thereby always become really his property, so far as to be for ever afterwards unalienable to other uses. May it not be said with truth, that no private person, nor even sovereign, can consecrate things to God beyond the life of the persons consecrating? He has no right in them farther, and therefore cannot give them to God for any farther time; succeeding sovereigns and legislatures will have the same right to dispose of them that he has; now God cannot be supposed to accept of more right in them than the donor had to offer. It must likewise be observed, that no legislators, at any particular time, had a right so far to consecrate any lands, as to put them out of the power of future legislators; succeeding ones would always have the same right as they to judge whether these lands were really disposed of for the service of God and the public: for if the things so consecrated be not really conducive to the service of God, and the interest of religion, then it is justly presumable that he never accepts them at all. Or if they be conducive at first to his service, but afterwards, by a change of circumstances, become unserviceable or detrimental to religion, it is then in like manner justly to be presumed that God gives up his title and interest in them, and any succeeding legislature has a right to resume them. Now on these grounds, we may judge of the alienation of the lands that belonged to the abbies, and other such monastic societies in England. Most of these were founded at first in superstition, upon false notions of the efficacy of masses and prayers for the relief of persons out of purgatory; these notions were invented and encouraged by

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the monks; so that the validity of the original donation, grounded upon false facts and impostures, and supported by stories of apparitions and miracles, might justly be questioned.

To which consideration we must add, that they were increased to such a number, as to be disadvantageous to the civil welfare of the nation, and detrimental even to religion itself.

By the 13th century after Christ the clergy of this realm were possessed of a third part of the lands it contained. This engaged too many to enter into the monastic life, in which they were useless to the defence and commerce of the nation, which was thereby much weakened. Of this Bede was sensible in his time, and therefore proposed in his epistle to archbishop Egbert, that some courses might be taken with the religious houses, which increased then too fast; they were likely to hurt the nation, by diminishing its military force, and hindering the advancement of its trade, by the vast quantity of treasure which lay dead there.

BUT they were also greatly detrimental to religion itself, in some cases, by their known immoralities; and yet more by their inventing, propagating, and keeping up, often by tricks and impostures, false and superstitious notions of religion, tending to delude men to rely upon wrong practices, and to corrupt their morals; for the monks always espoused the interest of the popes against the princes and bishops, under pretext of defending the liberty of the church.

As the monks found their advantage greatly in these notions, it would not have been possible to have brought them off from them by any interposals of the ecclesiastical or civil power, as long as those societies had remained: nor would it have been less difficult to have suppressed the papal influence and authority of which they were the principal supports; and they supported it so powerfully, as often to distress the kings and the bishops of this nation as well as of others, by suggesting to the popes the thought of obtaining the supreme temporal, as well as spiritual dominion in Europe; but no one who judges rightly of the true interest of religion, can think it would have been desirable, that the popes should have compassed this point, or even that the clergy should have continued to enjoy the same wealth and power they then had in England. This would naturally have drawn
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upon them envy and ill will, from many among the laity, who would have been desirous to lessen their grandeur. This was attempted several times before the Reformation; the kings then protected them, but could not have done it long; under this free constitution the laity must at length have been too hard for them. The only way for the clergy to support themselves effectually, as well as to do good in a free nation, is to make themselves respected and beloved by the laity; and the best way to do this, is not to carry on a separate interest from them, but to make it plainly appear that they desired to do them good in their spiritual interest, and to be upon the same bottom with other subjects, and to concur with them in promoting the common temporal welfare of the state. This, indeed, the Protestant clergy have strong motives to do, and none of any weight to the contrary; attempts or plain designs to aggrandize themselves too much, would prove ruinous to them. Now since the like ill effects must have been produced had the clergy continued in the same obnoxious state of grandeur and wealth that they were in before the Reformation; and as the continuance of the monasteries would have greatly contributed to the continuance of false doctrine, superstition, and spiritual servitude at least, if not of temporal too; upon these accounts, it was certainly for the real interest of the nation, and even of the Christian religion itself, that the clergy should lose some of that wealth which had been so improperly heaped upon them. And this being the case, it was justly supposeable that God, who always wills that to be done which is really best, was not disposed to retain any longer his property in those lands, which might have arisen from their consecration, but was disposed to approve such an alienation of them as was then expedient: by consequence, the legislature had sufficient authority to make such an alienation. It would, indeed, have been right, at that time, as bishop Latimer advised, to have applied some of these lands to acts of charity, and to foundations for promoting learning: such foundations were then much wanted; but this want has since that time been sufficiently supplied; there have been more works of real charity and public good done since the Reformation, than there had been for several ages before it. The thing that was at that time the least defensible, and may seem to affect us most at present, was the alienation

alienation of the great tithes of very many parishes into lay-hands; this was to the disadvantage of religion, and, in all appearance, contrary to the intention of its blessed Author, by whose inspiration St. Paul determined, that as the Jewish priests lived of the altar, so the Christian clergy should live of the gospel; that is, they should have proper maintenance from those they taught. Accordingly the primitive Christians gave even more largely than the tenth of their income to that purpose. By their example our Saxon ancestors determined to apply the tenth part of the product of their lands to the maintenance of the clergy; this was done with the most solemn forms, and confirmed by several succeeding princes. Now since the dedication of a tenth part of the product of the land for the maintenance of God's ministers was a thing fit in itself to be done; since our kings and parliaments had a full right to make the dedication; since they actually made it, and the grant, as being reasonable, has been very often confirmed by the legislature; since it always continued to be as reasonable and as much for the service of religion, as it was at first: under all these circumstances, can it justly be thought that our legislators had a right at the Reformation to alienate any part of these tithes into lay-hands?

THE chief pretence upon which it was done was, that these tithes had been unduly appropriated to religious houses, and might therefore be justly taken away as well as their lands; but it ought to have been considered, that this appropriation had been made only by the popes, who had no real authority to make it, and who, indeed, greatly injured the parochial clergy by so doing; to these latter, therefore, the tithes ought to have been restored at the Reformation, especially when they lost a great part of their income, by the suppressing of masses and obits, &c. the contrary course to which, of giving these tithes into the hands of lay-men, was certainly a blemish, which, I must own, I cannot undertake to justify. However, I do not presume to determine that the government sins in permitting them to be held, or that the gentlemen, possessed of these tithes, are guilty of sin in holding them, and great mischiefs and confusions might follow if these bargains were set aside; for this reason, even the popish clergy, in Queen Mary's time, consented, by a solemn act, that the possessors

fors of these tithes should continue to keep them; and in so doing they must have supposed that God would consent to it too, which, indeed, there may be some grounds to presume; but then it must also be supposed, that however God may excuse the possessors of these tithes for retaining the main part of them, he will expect that there should be some competent allowance made out of them to the vicar, who does the duty. With this charge or burthen they were at first given; and though the bishops may not now have the power by law, as they formerly had, to cause such an allowance to be made to the vicar, yet the proprietors ought to think themselves obliged in conscience to do it, or the parliament is to make them do something in this way. Lord Bacon, *Refuscit.* part i. p. 188, had reason to observe, as he does, that all parliaments, since the 27th and 31st of Henry VIII. have seemed to stand obliged to God, in conscience to do something for the church; but it must at the same time be allowed, that our nation has gone some way towards freeing itself from this obligation. There is a fund arising from the first fruits and tenths, granted by the late Queen Ann and her parliament for this purpose, that will in time make some better provision for the poor clergy. This fund consists of about 15000*l.* *per ann.* from whence about 60 livings are augmented every year, besides those that are each year augmented in conjunction with private benefactions; and so in process of time all the small livings in England will come to be augmented. In the mean time, there is no reason for the jealousy that some gentlemen have entertained, that this fund will make the clergy too rich; when there is any ground for such an apprehension, it may justly be diverted to some other purpose; but till then, it is very justly employed to wipe away the blemish of the Reformation.

THE second objection of the Romanists against our ecclesiastical constitution, is made to the want of regularity and competent authority in our sacred ministry. They say, that it cannot have any real efficacy to the purposes of religion; because our pretended holy orders have not been derived as they ought to have been, and as those in the church of Rome have actually been, by an uninterrupted personal succession of bishops and clergy from the apostles of our Saviour, i. e. from

from himself. This succession, they say, was broken among us in the beginning of the reign of queen Elizabeth.

For the new bishops, then made in the room of the deprived ones, and from whom our present orders have been derived, would have been unjustly intruded into their sees, even if they had been duly consecrated; for the Catholic bishops who were then justly possessed of those sees, were causelessly and unjustly ejected, and by an incompetent lay authority only; and so the new ones could not have had a just title to them, even if they had been duly made and consecrated bishops.

BUT they were not in reality so made or consecrated. For,

FIRST, the pope's consent to its being done, which was necessary in conformity to ancient custom and canonical right, was not obtained or asked.

SECONDLY, they were not consecrated by any bishops, who themselves had really the episcopal character, but by a priest or two in a clandestine and indecent, if not profane, manner; so that their episcopal authority was, in truth, derived only from the king's great seal, which though it was thought sufficient by Cranmer, and some others of our principal reformers, will hardly be now deemed to be so by any good Christian; such an original defect of character and authority can never be made good by such a length of time as hath passed since that fact; nor have any of their successors been really true English, or Christian bishops. They likewise object to the Protestant clergy, their having the improper liberty of marriage.

IN answer to these objections, I must first observe, that those who are said to have been Catholic bishops here in England, at the beginning of queen Elizabeth's reign, were justly deprived of the sees they possessed, not only because they refused to acknowledge the Queen's ecclesiastical supremacy, which they ought to have done, as I shall presently shew [c]; but also on account of several great errors in religion, of which most were of a practical nature, viz. transubstantiation, the adoration of the host, the sacrifice of the mass, with the invocation of saints and angels; all which I have plainly shewn to be con-

[c] Tract of Supremacy to be considered.

trary to the Scripture, and which they persisting to avow, the civil government had, therefore, a right to deprive them of their ecclesiastical stations and emoluments under its establishment: it needed no authority, besides its own, which was entirely competent and sufficient for this purpose.

As the Queen had also a right to nominate other bishops to succeed them, without any consent of the pope. He had, indeed, by the indolence or connivance of our princes, for a long time exercised a pretended right of confirming the nomination, which our kings made of persons who were to be consecrated bishops: but first, he had no other pretended ground for this right, but some ancient canons and customs about appointing bishops, and the authority which they were to have, which were no otherwise obligatory to us than as we received them, and which, therefore, might be at any time discontinued, and laid aside by the legislature, when they were become detrimental to the nation. Secondly, if the pope had had any real right from thence, yet he would have lost it, and all other his rights over this kingdom, by persisting to maintain transubstantiation, and other gross and pernicious errors[d], and by unjustly excommunicating the Queen and nation, for not allowing him that supremacy and jurisdiction here to which he had no longer any right, farther than they would allow it, and which he had used, as I have shewn, very oppressively and ill, so that it might justly have been denied him till he should use it better. The Queen therefore did rightly, in resuming and exercising that right of nominating bishops, which had been long in the crown of England, as well as in that of others; but neither she, nor her ministers, thought that the royal great seal was that only which gave those bishops their spiritual authority, or that there was not the intervention of any preceding bishops requisite for that purpose. The representation which the Papists make of all our reformers, as having crude and false notions of ecclesiastical authority, is not true. Archbishop Cranmer, indeed, and some others, might not at first have quite just

[d] I have before shewn, that even upon the foot of the canons of Nice, or any other, England was not within the pope's metropolitan or patriarchal jurisdiction; so that he had no right to confirm our bishops.

thoughts of this matter [e]; and it is no wonder, considering with what heat and violence things were carried at that time about religion; but he afterwards corrected his judgment about it, and agreed with those divines of that time, who asserted, that there was an original and constant difference between civil power, and ecclesiastical authority, which last could only be derived from Christ and his substitute; that is, from the ordination of the latter with the consent of the people, and not from any civil sovereign merely as such. This was the doctrine published by Henry the Eighth's command, in the institution and erudition of a Christian man, and which was followed by archbishop Parker, and by Cecil and others, who had the chief direction of ecclesiastical affairs in the beginning of Queen Elizabeth's reign. And that the Queen herself appears to have been of this judgment from the xxxix articles, and from her declaration about them published not long after the beginning of her reign; they might not, perhaps, think that the affair of the uninterrupted succession of bishops was of so great moment, that, if it could not have been had, the want of it would have annulled all ecclesiastical ministration; but they probably thought, that, as it had been an ancient apostolical institution, continued and practised through all ages of the church, it ought, for the sake of regularity, order, and peace, to be adhered to as far as possible. Accordingly they took all the care they could, that the new bishops, nominated by the queen, should be consecrated by other bishops, against whose episcopal character, and their having been formerly consecrated, there could be no just exception: this was the course anciently taken in the isle of Cyprus, where the suffragan bishops always consecrated their own metropolitan, and were maintained in their right of doing it by the council of Ephesus.

Of such bishops there was a sufficient number, who were willing to assist in this work; to some of whom the Queen directed her commission and mandate, to consecrate archbishop Parker; and, in pur-

[e] They seem to have thought that the king, merely of himself, had authority sufficient to make all ecclesiastical officers, as well as civil ones; but this authority, as I have shewn, does not originally belong to the sovereign as such. The Scripture and apostolical institution, as well as the reason of things, placed it wholly in other hands, unless they consent to transfer the nomination and right of superintendence to sovereigns, for as long a time as they shall use this right well.

fuance of it, four of them acted in it, viz. bishop Barlow, bishop Scory, bishop Coverdale, who all had been formerly possessed of episcopal sees, and bishop Hodgskins, who had been only suffragan bishop of Bedford. The first, and the last of these bishops, had been consecrated in the reign of Henry VIII. by bishops whom the church of Rome allows to have been rightful and sufficient ones, and by the ordinal used in the church of Rome itself. Hodgskins was consecrated 9th Dec. 29 Hen. VIII. by John Lond. John Roff. Rob. Asaph ‡. Of bishop Barlow's consecration, indeed, the acts are not to be found; but the Romanists cannot, on this account, with reason, deny that he was ever consecrated: for, at that rate, they may as well deny that bishop Gardiner of Winchester and several others were ever consecrated. The acts of their consecrations are lost as well as Barlow's, and why then should they admit them to have been duly consecrated any more than Barlow? If they say that they were always publicly taken and acknowledged for bishops duly consecrated; so was Barlow. His leases were allowed to stand good, &c. The other two bishops, who joined in consecrating archbishop Parker, were Scory and Coverdale. But these, indeed, had been consecrated in the reign of Edward VI. by an ordinal different from that of the church of Rome; and the Romanists, pretending that this ordinal was defective, object against them on that account. They say it was defective because there was no mention made in it of the power of offering the sacrifice in the mass, and because it was made by lay-authority only.

BUT there is no ground for the objection relating to the sacrifice; for the ancient ordinals of the Romish church had no mention of the sacrifice: the consecration was made only by imposition of the bishops' hands, and prayer to God, as Morinus allows; both which that ritual of Edward VI. had, and the Greek rituals to this day have no more, notwithstanding which they are allowed by the church of Rome. Indeed, there is very good reason to think it probable, that the sacrifice in the mass, as now offered in the church of Rome, could not be mentioned in the ancient rituals as necessary; because I have shewn it to

‡ See Lindsay's *Mason*, p. 319, ex registro Cranmer, f. 204.

be unlawful in itself; and therefore it was an advantage in Edward the VIth's ordinal that it wanted it.

NOR was it any just objection, that it did not expressly mention the consecration to be for the office of a bishop; for several circumstances in it plainly shewed it was for that office. The alteration made after the Restoration, by expressly mentioning the office of a bishop, was chiefly to answer an objection of our Protestant dissenters: the ordinal, therefore, was not defective in itself, nor was it the worse for the share the parliament had in ratifying it. For it was at first drawn up by six prelates, and six other persons learned in the law, who were appointed by the king; and good kings in the Scripture had a right, and did use to appoint forms of religious service*.

I HAVE also shewn in my third tract, that kings, who make a public establishment of religion, have a right to do this: so that the ritual of Edward VI. was not the worse for the concurrence of the king and parliament in it. By this ritual, Scory and Coverdale were consecrated both in one day, by archbishop Cranmer and bishop Ridley†. So that Barlow, Scory, Coverdale, and Hodgskins were all of them duly consecrated bishops; and by all these four, who every one laid their hands upon his head, was archbishop Parker consecrated archbishop of Canterbury, in Lambeth chapel, on Monday Dec. 17th 1559. This appears from the register of Canterbury, which is now extant, and bears all possible marks of authenticity. This register was in archbishop Parker's time referred to, by an act of parliament made 8 Elizabeth, chap. i. Stat. at large, tom. i. p. 815. The author of the life of Parker, published at London 1572, of which several copies are extant (I have seen two, one in the library of Westminster, and one in the hands of the bishop of Durham) in relating the confirmation and consecration of him, and the other bishops after him, marks in the margin, that they were drawn from the register. In A. D. 1586, these registers were referred to by F. Thynne: see Holinshed's Chron. p. 1491. They were produced by archbishop Abbot to some Romanists in king James Ist's time, who permitted them to peruse them; and there was

* See Lindsay's Mason, p. 184. Courayer, tom. iv. p. 21.

† See Lindsay's Mason, p. 182. who quotes the register of Cranmer, fol. 237.

no reason to have produced them before that time, because the fact of their having been consecrated by Edward VIth's ritual was not contested; but only the validity of their consecration, supposing it to have been performed according to that ritual. This evidence from the registers, concerning the fact of consecration, was confirmed in king James Ist's time, by the earl of Nottingham, who declared in the house of lords, that he himself was present at archbishop Parker's consecration at Lambeth. Consequently, the fable of Nag's-head ordination, invented and published by Holywood in king James Ist's time, was plainly as false, as in many circumstances it appears to have been absurd. So that it is evident that the new bishops in queen Elizabeth's time, from whom the present succession is derived, were duly consecrated.

AND there was no reason to pretend, as the Romanists do, that the spiritual characters of our bishops and clergy were, or are made worse or blemished by their being married; for a state designed by God for mankind in general, even while they were in paradise itself, can never be impure in a moral sense. In the Mosaic law, which insisted much on outward purity, it was allowed to the high priest himself.

IN the New Testament, marriage is declared to be honourable in all*; and the bishops are expressly allowed to be the husbands of one wife†, although, in times of persecution, St. Paul did not advise it to them, or even to Christians at large; yet there is no intimation, that, in quiet times, the clergy ought to be under an obligation to celibacy.

IN the third and fourth centuries, indeed, celibacy was magnified by some, and, in the fifth century, enjoined by others; but it was not universally practised. In the eastern church, marriage was allowed, and the celibacy of the clergy did not obtain generally in the west, till the ambition and usurpation of the popes, having drawn to themselves a power over most of the great preferments, allured or forced most of the clergy upon celibacy. Wharton, p. 50.

THE true reason why the popes were so intent upon gaining this point was, because they thought the clergy, having no wives or chil-

* HEB. xiii. 4.

† 1 TIM. iii. 2. TIT. i. 6.

dren, would be more dependent upon their see. This made them connive at the immorality and incontinence of the unmarried clergy, which was so great, that even pope Pius II. said, that the clergy ought to be allowed to marry [f].

INDEED, in the views of policy, this conduct of the see of Rome was expedient for its own grandeur; but this consideration is of great force, to shew that the marriage of the clergy is far more to the advantage of civil states, than their being in celibacy; in regard that the former contributes to increase the people, makes them better subjects to civil government than the latter; and, at the same time, more exemplary to their fellow subjects. Upon which, as well as other accounts, all princes and states in their petitions and remonstrances for reformation, constantly desired the clergy might be permitted to marry. (Wharton 167.) Accordingly, the marriage of our clergy is so far from being an objection to our establishment, that it is a recommendation to it.

THE next objection of the Romanists to our ecclesiastical constitution, relates to the declaration which they say our laws make, that all the ecclesiastical jurisdiction of our bishops flows originally from the crown; to the practice of our common law courts in restraining the exercise of it by prohibitions; and to the king's judging in the last resort by appeals to his delegates of all proceedings in it, which delegates, and even other judges in ecclesiastical causes, though they be only laymen, yet are allowed to excommunicate persons before them in judgment.

FIRST, one must allow that there are, indeed, some general declarations in acts of parliament, particularly 37 Hen. VIII. ch. 17, that all spiritual as well as temporal jurisdiction flows from the crown. But those declarations may fairly be understood only of the bishops jurisdiction, *in foro contentioso*; or that which is supported by temporal penalties, or relates to any matters which were by the civil state submitted to the cognizance of the clergy, viz. matters matrimonial, testamentary, of tithes, &c. for the jurisdiction as to these doth certainly flow from the crown of this realm: but the acts of parliament

[f] See also St. Bernard, quoted by archbishop Parker, in Anselmo, p. 186. edit. Lond. 1729.

cannot, with reason, be supposed to mean, that the bishops, as church governors, have absolutely no other jurisdiction than what they derive from the crown; because Henry VIII. who passed those acts, expressly owns, in one of his commissions to the bishops, that they had some authority in sacred matters derived from Christ. The acts mean only the jurisdiction exercised by them as bishops, under the public establishment in England; in which respect the exercise of it *in foro conscientie* may not be but by the leave and power of the king within his dominions. And this consideration shews how reasonable it is, that the king's temporal courts should have, as they ever had, an authority to controul and limit the ecclesiastical jurisdiction, by granting prohibitions: for, as Bracton observes, if the ecclesiastical court was to judge for itself finally what causes belong to it, there might be danger of its assuming many that did not belong to it, as actually happened in France.

THEREFORE it is reasonable, that the king's common law courts, as being the superior, should prohibit the ecclesiastical ones from proceeding, till they be satisfied that the latter have a right to proceed. Even archbishop Peckham allowed this to be just; and, in fact, the course has always been to grant prohibitions, if not from the court of common pleas, which some have doubted, yet certainly from the king's bench and chancery. However, if these courts find that the cause is of ecclesiastical cognizance, they are by law obliged to grant a consultation, upon which the ecclesiastical court proceeds; and it is no just objection, that appeals lie in the last resort from the ecclesiastical courts to the king in chancery, who, by his delegates appointed under the great seal, may determine finally whether the ecclesiastical court has proceeded rightly or not. It is reasonable he should have this authority; because, as the civil state gives the public establishment to the church, and vests her with several authorities, to which she would not be otherwise entitled; the crown is, by the legislature, entrusted to judge finally, whether the terms of his establishment be complied with by the clergy and others; and whether the authority vested in the clergy be well used or not: for if he had not this judicial authority, his establishment might be perverted and corrupted, and his subjects might be aggrieved and unjustly used without remedy,

which ought not to be. Accordingly, by our antient constitution, this authority of judging all ecclesiastical causes upon appeals was originally vested, if not in the crown, yet certainly in the highest court. There are instances of it in the Saxon times. It was strongly asserted by our kings in the case of archbishop Wilfrid. It was expressly asserted and reinforced by Henry II. in the council of Clarendon. Afterwards, indeed, the pope of Rome, by very artful conduct, and by taking advantage of the indolence, or the superstition and bad titles of our kings, usurped, and for a long tract of time, even down to the Reformation, exercised, more or less, the jurisdiction of hearing and determining causes upon appeals in matters ecclesiastical. But their doing it, though it was suffered by our kings, was always considered by our lawyers as an usurpation; and accordingly this branch of the royal supremacy was justly reasserted and recovered at the Reformation; has ever since been in the crown, and will not justly be blamed by those who duly consider the reason of the thing, and our ancient constitution.

NOR will such persons blame even the authority allowed to the royal delegates and other judges, though they be only laymen, to excommunicate persons in judgment before them. In order to understand the true meaning of our laws, in giving this authority to mere laymen, we must consider, that, for some ages before the Reformation, the schoolmen and canonists of the church of Rome had distinguished ecclesiastical jurisdiction, as it is coercive, and has its effect *in foro exteriori*, from the power of the keys, considered as productive of spiritual effects *in foro interiori*, or *foro conscientiae*; and while they confined the latter of these effects to the clergy alone, they allowed laymen to be capable of the former, if they were duly commissioned to it by one who himself had ecclesiastical jurisdiction, especially by the pope. It would be easy to shew, from numerous passages of the schoolmen, particularly Gerson, that these were their notions, and that these notions were reduced to practice. The monarchy of Sicily is a famous instance. Now this being the current notion and practice of the times before and about the Reformation, it is no wonder that Henry VIII. who was a great admirer of the schoolmen, should go into it, and that his parliament and clergy should follow him; both of them, however,

meant that excommunication, when exercised by laymen, should have no other effect than it had before, i. e. it should be only valid *in foro exteriori*. The chief difference they intended to make was, that whereas, before the Reformation, this authority was derived to laymen from bishops, or from the pope in the last resort, it should, after 37 Henry VIII. chap. 17. be derived ultimately from the king alone. It was not conceivable, that these lay delegates could, by their excommunications, affect any man's spiritual state in the sight of God: they could not either retain sins, so as to make him an object of the divine indignation, or cut him off from the invisible church of Christ: they could affect him no otherwise in his spiritual state than by excluding him from the communion of the outward visible church, and thereby hindering him from the outward visible means of grace, as a prince may do by keeping a subject closely imprisoned. And one may presume this to be the same of the royal delegates and other laymen who excommunicate at present: they only mean to exclude the excommunicated person from the visible church, and subject him to some temporal penalties and incapacities: and, supposing them to mean no more than this, there cannot remain any just objection to our ecclesiastical establishment from this practice.

BUT the Romanists object farther, that the oppressions put upon the clergy in their judicial capacity, though very great ones, are yet less grievous than those which they suffer in their spiritual authority, being prevented from making regulations in spiritual matters, which are necessary or expedient for the welfare of the church as a society, and not allowed to meet together in order to make canons or constitutions without the leave of the king; nor, when they have, by the king's licence, made any canons or constitutions, however useful or necessary they may be, will the law allow them to be obligatory even to the clergy, without the king's confirmation under the great seal; nor to the laity without a confirmation by parliament. These are restraints plainly inconsistent with the rights which Christ has given to the governors of his church, as a spiritual society formed for the purposes of religion.

Now

Now in answer to these objections, one must acknowledge that, by the 25th of Henry VIII. chap. 19. the legislative authority of the clergy is put under those circumstances of subjection to the royal authority, which the objections mention; and that, by a judgment not long since given by the judges of the King's Bench, in the case of Middleton and Croft, it has been adjudged and settled that canons, made by the clergy in convocation, do not bind the laity, unless they be confirmed by parliament. But none can affirm that these restraints upon the clergy are either contrary to the design and institutions of the Christian religion, or to the ancient and right constitution of this realm.

I HAVE allowed, indeed, in my third tract, that every part of the Christian church, when it is unestablished, has a right to meet when it is necessary, and make regulations for itself, provided they be not detrimental to the civil state. But I have shewn that when it has been established, it ceases to have these rights of meeting and making canons without the consent of the civil sovereign; and that its canons, when made, cannot be legally valid without the sovereign's consent. Now, agreeable to these maxims, have anciently been, and are at present, the sense and practice of our English constitution. A law of Ethelred, in the Saxon times, says, "*Prudentes erant sapientes mundi, qui ecclesiasticis legibus adjunxerunt leges seculares ad disciplinam populi.*" The ecclesiastical laws in those times were, indeed, generally first digested by the clergy in their separate assemblies; but afterwards they were mostly brought into the Witenagemotes, which were mixed assemblies of the king, the clergy, and laity, and were enacted by them. This circumstance implied, that the clergy and canons would not have been reckoned sufficiently obligatory to the laity without the concurrence of the civil legislature. Parker, *Antiq.* p. 180. speaking of some constitutions made by archbishop Anselm, in a synod at London, about A. D. 1109, says, that "*hæ constitutiones statim spretæ et contemptæ fuerunt. Obstitit etiam, ne canones hujus synodi, legum vim et potestatem sortirentur, ingens inter regem, (Hen. I.) et Anselmum discordia et contentio de ecclesiarum investituris orta.*"

It is true, that about Henry the Second's reign, when our English clergy, like those in other nations, in pursuance of the papal schemes, had separated themselves as much as possible from the laity, the former began to claim and exercise an authority of making canons by themselves only, and of imposing them as legally binding to the laity, even without their consent. Archbishop Arundel had enjoined, in one of his Constitutions, that no one, "*authoritatem decretorum, decretalium aut constitutionum provincialium, potestatemve condentis eadem in dubium revocet, sine contra determinationem eorumdem doceat: contrarium asserens pœnas hæreseos incurrat.*" Gibson's Codex, p. 407. And Lynwood more expressly says, that, by provincial constitutions, all men of the province, as well laity as clergy, were obliged. And indeed, this authority seems to have been not much opposed, or rather to have been in some cases allowed, both in the courts of justice in Westminster-hall, and in the parliament itself, from the time of the clergy's holding separate councils from the laity, down to the time of the Reformation. For in the cases of the prior of Leeds, and the abbot of Waltham, in the Year-book H. VI. the judges expressly allow, that the clergy in convocation have authority to appoint fast days and feasts, by which the laity, no doubt, were then thought to be obliged without any confirmation or authority from the crown. The communion in one kind was then settled by a provincial constitution, and not by act of parliament, &c. But still these cases, in which their constitutions were allowed to bind the laity, were very few; and even in them the nation reckoned the laity to be bound, only by the voluntary submission to, and acceptance of, them by the king and parliament, and not by any acknowledged authority in the constitutions, as being of themselves legally binding to the laity: for if the nation had acknowledged a binding force in the constitutions, as of themselves, upon the laity, then they must have acknowledged all such constitutions to be binding; but this they would not do, even with respect to constitutions, in what was allowed to be *res ecclesiastica*: they refused to pass the foreign canon about legitimating persons, born in ante-nuptial fornication: they would not allow the constitution for tithing wood of more than twenty years growth [g].

[g] See archbishop Boniface's canons, 1244.

Therefore

Therefore it is plain, that they reckoned only such canons to be valid, as had been expressly or tacitly accepted, and allowed by the civil legislature; so that they went always upon the principle, that *quod omnes tangit, ab omnibus approbari debet*. However, as the authority that had been assumed by the clergy to make canons, had some appearance of having been exercised in their own right only, and was productive of false notions in the people, and of other inconveniencies; on these accounts the legislature, in the reign of Henry VIII. determined to put a restraint upon this authority, assumed by the clergy in convocation. They were required to submit and agree, that for the future they would not either meet or treat, in order to make canons, without the king's licence under the great seal; nor when they had made any canons, would they promulge them, or pretend that they were valid in law. With a like confirmation under the great seal, and according to the terms of this their submission, the 25th Henry VIII. chap. 19. was made. Whether by that statute after such confirmation, their canons were intended to be legally binding to the laity, without act of parliament, has been a question among the learned in our law. Some have thought that canons, so confirmed, must have been intended to bind the laity; because this statute 25 Henry VIII. chap. 19. was made according to the submission of the clergy, and in that submission, it was supposed the canons of the clergy, as they had before bound the laity in divers cases, so they should still bind them in the same, when they were made with the king's consent. They say, that this was so understood by divers eminent lawyers amongst us, as well common as civil and canon. And that the practice was accordingly, during the reigns of Edward the Sixth, Elizabeth, and James the First, down to the troubles of Charles the First. But on the contrary, others have maintained that it was the ancient constitution law of the realm, that the laity could not ever legally be bound without the consent of their representatives in parliament: that the authority assumed by the clergy, to bind the laity by their canons, had been only suffered and connived at, not approved or enacted: that the words in 25 Henry VIII. chap. 19. were merely negative, or, at most, carry only an intimation, that the canons of the clergy should, indeed, be binding with the king's consent; but do not express whom they should bind, whether the
laity,

laity, or only the clergy; and that if there was any practice of this kind in queen Elizabeth's time, for their binding the laity, it was owing to the authority vested in her by parliament, to make, with the clergy, constitutions and injunctions binding to the laity; which authority none of our kings or queens have since legally had, except in some few particular cases, as the appointing fast days, occasional forms of prayer, &c.

As the lawyers of this latter side seem to have better reasons, so their doctrine has long since had a sanction given to it by a solemn judgment in the King's Bench, in the case of Middleton and Croft, who have determined that no canons of the clergy, even though confirmed by the king under the great seal, if they be not also confirmed by parliament, do bind the laity. If therefore the Romanists could from thence justly object to our constitution, we must confess that the fact is as they represent it. But I do not conceive that they can from thence make any advantage against us; for I have shewn, that this is a right which every sovereign does, or may acquire, by granting a civil establishment to a church, as our legislature does to the church of England. The legislature might, indeed, have vested the king with such an authority, that canons, made by the clergy, and confirmed solely by him under the great seal, should be binding to the laity; but they do not seem to have done this, and it seemeth better for the public interest, and even for that of the clergy themselves, that they have not done it; for in a free nation, as ours is, where many persons differ from others in their religious notions, canons made by the clergy, without confirmation by parliament, would never have been well submitted to, or obeyed; whereas, when they are so confirmed, they will meet with no dispute, nor will the parliament, or the laity, have any jealousy of the clergy; but will be more ready to give a sanction to any of their canons, that will be really expedient to the interests of religion.

BUT the Romanists urge further, that the king and parliament have no authority, by our constitution, to make laws about matters of great moment relating to truth and practice in religion, without the consent of the clergy, and even against their will; which authority they may use if they please, to make pernicious alterations in religion, and to

deprive the clergy for not conforming to them, without any canonical judgment; which deprivation they have unjustly inflicted on divers occasions.

FIRST, to this I answer, that as the law now stands, the king, though he can appoint new occasional prayers, &c. not repugnant to the liturgy established, yet cannot make any alterations as to any thing of moment in religion, without the consent of his parliament. Secondly, nor can even the king and parliament declare any thing to be heresy, besides what is already so by law, without the assent of the clergy in convocation. For this provision is made by Elizabeth, and that law is, among the others provided for the security of the church of England, declared fundamental to the union between England and Scotland, and never to be altered [h]; so that if any part of the union be unalterable, we have as much security as can well be had in matters of religion. And we further have a large toleration, so that any persons may, as far as human laws are concerned, break off from the established religion, if they, with reason, disapprove any part of it; so that neither the authority of the crown, nor the legislature, do put any force upon men's consciences in matters of religion, as to the deprivation of the clergy by king and parliament, without canonical authority. It is true, that if any clergyman, under the establishment, maintains any material error contrary to the doctrines of it, or otherwise offends against religion or the state, he is, indeed, liable to be deprived of his bishoprick or benefice, even by the civil power alone, as several of the bishops and clergy were at the beginning of Q. Elizabeth's reign, and at that of K. William III.

BUT neither this authority, nor these proceedings can be justly objected against: for I have, in the third tract, plainly shewed, that every sovereign, who makes an establishment of a religion, must of course have this authority. And it was very rightfully used, on both the above-mentioned occasions, to deprive the bishops and clergy; because they obstinately persisted in maintaining errors of great importance as to religion and to the civil state.

[h] See the act of union.

BUT the Romanists object farther, that in pushing on our liberty since our schism, we have not only invaded those that may be called the secular rights of the church, but have even thrown off some of the greatest privileges and advantages of a spiritual kind, which are plainly derived from the gospel of Christ.

WE have, in the first place, discarded private confession to a priest, for the pardon of our sins, and satisfaction or penance in consequence of it, very necessary for preventing much worse sufferings in a future life; together with extreme unction, a sacrament instituted plainly in the holy scripture, and designed for our support and comfort in going out of life: all which practices being visibly of very great importance, our throwing them off argues a high disregard to the gospel of Christ, and to our own spiritual interest, as well as to that of our people; and no Christian, who hopes for salvation, ought to be of such a church. The Romanists affirm, that one of the greatest and happiest discoveries which the gospel of Jesus Christ hath made to the world is, that to those who are Christians, God will, at all times, forgive their sins, how many or great soever they have been, upon their true repentance. And he has ordained, that this pardon shall be dispensed by the clergy of his church, without whose ministry, when it can be applied to, he will not grant it. With his twelve apostles, and with their successors, he promised to be to the end of the world. Our Saviour expressly said *Whatsoever ye shall bind on earth, shall be bound in heaven; and whatsoever ye shall loose on earth shall be loosed in heaven* [a]. And again, to the same effect, *Whosoever sins ye remit, shall be remitted unto them; and whosoever sins ye retain, they shall be retained* [b].

IN order to the clergy's duly exercising this authority, it is plainly necessary, that men should confess their sins unto them in such a manner, that they may be judged to be truly penitent; and, as a proof of their being so, they are obliged to submit to such works of penance, as the priest, to whom they confess, thinks fit to impose upon them. Indeed, this submission will always be greatly to their advantage: for our Saviour, who remits to penitent Christians the eternal punishment of their sins, does, in case of all sins committed after baptism, reserve

[a] MATT. xviii. 18.

[b] JOHN xx. 23.

some temporal punishment to be undergone on account of them, either in the present state, or in the intermediate state between death and the resurrection; which latter sort of punishment will probably be much more severe than any that can be endured in this present life. It is therefore greatly for the interest of every one to undergo present penances for their sins, or to do what the church ordains in commutations for them, in order to obtain those indulgencies, or shortnings of the time of sufferings in purgatory, which the church has authority to give. These considerations shew plainly, how greatly in the wrong the church of England is, for laying aside the use of confession and penance, and indulgencies; nor is she less in the wrong for having discarded the sacrament of extreme unction, which was designed for the support and comfort of the soul in its passage out of this life. This sacrament is plainly instituted in the Epistle of St. James, which says, *That if any one be sick, let him call for the elders of the church, and they shall anoint him with oil in the name of the Lord* [c]: upon which, if the divine providence sees fit, he shall be raised up to health again; or if not, yet at least his sins shall be forgiven, and fresh supplies of grace and consolation shall be afforded him. These are such plain as well as great advantages, that it shews a judicial blindness and hardness of heart in the English Protestants to have rejected them. To these charges thus laid by the Romanists on us of the church of England, we answer:

FIRST, that private confession of sins to a priest is not, by our church, in any case forbidden to any person, or advised. But it is not indeed enjoined to any person, or in any case; it is left wholly to each person's discretion, and this with good reason; because the injoining it universally, as is done in the church of Rome, would have been a very great burden, as even Bellarmine confesses; and might be attended with very ill consequences, both to public states and to private persons, especially to the female sex. These dangerous consequences certainly make it greatly desirable to be at liberty to practise it or not, at every man's discretion, if the Scriptures of the New Testament allow this liberty; and that they are far from imposing this burthen of

[c] JAMES V. 14.

the necessity of confession upon any one we shall easily see, by considering the passages of Scripture alledged by the Romanists to prove the necessity and obligation upon every Christian to confess all his sins to a priest, with all the circumstances of each of them. Our Saviour does, indeed, tell all his apostles, that, *Whatsoever they should loose on earth, should be loosed in heaven* [d]: he farther promises, that *Whosoever sins they should remit, should be remitted unto them; and whosoever sins they should retain, should be retained* [e].

BUT if we consider the attributes of God, and the nature and design of the Christian religion, can we imagine that Christ intended to vest this high authority in the clergy of all ages, of whom none are infallible, and many have always been, and will be, corrupt and ill designing? is it agreeable to the perfections of God to suppose, that he makes the eternal salvation of so great a part of mankind depend on the acts and dispositions of men like themselves, either corrupt, or at least fallible? would he vest men with an authority, which, properly speaking, can have no effect? and must not this be the case of merely human absolutions or condemnations? If a sinner be truly penitent, he will certainly be absolved by God, whether a priest absolves him or not; and if he be not really penitent, the absolution of a priest will do him no good. This authority, therefore, being of little or no use, is it supposable, that God should vest it in fallible men? No; it is less so, because it must naturally be productive of ill effects; it may dispose some weak and corrupt men to have an undue reliance upon it, and thereby make them less disposed to true repentance; and it may put some bad priests upon making a corrupt use of this supposed authority, to promote their secular interest, and to reduce men to an undue dependance upon them; these considerations make it highly probable, that God did not intend to vest this authority in the clergy of all ages, nor indeed even in the apostles themselves; who, though they were vested with divers miraculous gifts of the holy Spirit, yet do no where, in the holy Scriptures, appear to have exercised or laid claim to this authority of absolving men from their sins after baptism, upon confession and repentance. They seem to have referred this

[d] MATT. xviii. 18. [e] JOHN xx. 23.

high part wholly to God, declaring that they themselves would not, and exhorting other men that they should not, judge any thing before the time, but to wait for the righteous judgment of God. The true sense of the texts in St. Matthew xviii. and St. John xx. relating to this matter, seems to be, that the apostles were intrusted by Christ to make known to mankind the gospel terms of eternal salvation; especially that great and necessary doctrine, that whosoever should believe in Jesus Christ, and heartily repent of his sins, how many or great soever they might have been, and amend his life, shall be pardoned by God, and be eternally saved: and, on the contrary, whosoever shall not believe, and not duly repent, shall be damned. Thus God will judge mankind according to their gospel; and by preaching it at God's command, and by his authority, they may be said to save both themselves and those that hear them; and even, on the contrary, to retain the sins of those men who are impenitent, in the same manner as the prophet Jeremiah is said *to destroy and root out nations, and to restore them* [f]. The meaning of which is, that he let them know, by divine commission, the terms upon disobeying or obeying which they should be destroyed or preserved. As this sense of the text above-mentioned best agrees with the attributes of God, and the design of the gospel, it certainly ought to be received; and if so, there is no ground at all for that necessity of private and particular confession of sins, or that authority of absolving men, which the Romanists insist upon.

BUT even if there were any ground for necessity of confessing sins to priests, there would be still none for their imposing as they do penitential works, as being necessary to the complete remission of sins. This doctrine, concerning the necessity of these works, is without the least foundation in the Scriptures: these always represent God as granting a full and absolute pardon to mens sins at all times, even after baptism, upon their true repentance and amendment. The declarations to this purpose are very frequent, and as full and express as possible, in the New Testament. There is not the least mention that any temporal suffering is reserved to be undergone, either in this life or the next, in the way of satisfaction for the sins so pardoned; on the

[f] JEREMIAH i. 10.

contrary, these sins are represented as intirely and perfectly done away by the sufferings of our Saviour, embraced by faith, and followed by repentance. Now it is a known maxim, that all declarations of pardon and advantage ought to be understood according to the natural and full extent of the terms in which they are made. If God had intended to put any restraint upon them, or to have reserved any temporal punishments on account of them, he would certainly have said so in very clear terms; which not having been done, there is no reason to suppose he meant it. There are, indeed, several passages in the Scripture, which represent men sometimes to undergo temporal sufferings in consequence of their sins which have been pardoned: but these sufferings are not inflicted as penal satisfactions for those same sins that have been pardoned; but only as occasionally laid upon men, when God sees it proper, either for their trial and improvement in virtue, or for example to others; which are ends quite different from the satisfactions which the Romish doctrine supposes to be necessary; and, if this doctrine of penal temporal satisfactions for sins pardoned, upon true repentance, be groundless and false, the Romish doctrine about indulgencies and purgatory falls to the ground: for indulgencies are supposed to be alleviations which the church has authority to grant with regard to the measure or duration of those penal satisfactions, which, if no such be required, are plainly usurpations of groundless authority, and designed only to heighten the gains and influence of the clergy. And the same thing may be observed of their doctrine and practice about extreme unction. There is, indeed, a passage in St. James, which at first sight gives some ground for this [g]; but that passage plainly referred to the case of miraculous cures: it was not to support men in their going out of life, but to restore them to it when divine providence thought fit. When these miraculous cures ceased in the church, there ought to have been an end of such unctions: but as men are apt to be attached to external forms, this was continued for some time in hopes of relief in the way of cure; and when that hope ceased, the clergy were not willing to let it quite go, because it gave them an [opportunity of being about sick and dying persons, of which they made great advantages; and so they pretended,

[g] JAMES V. 14.

without any ground from Scripture, that this practice would be attended with spiritual internal graces, and erected it into a sacrament for perpetual use, without any ground from the Scripture. Upon the whole, we have reason to be very thankful, that we are free from these groundless impositions, so burthensome, and attended with such ill consequences.

BUT the Romanists object farther, that we have hardly any ecclesiastical discipline for the correction or restraint of vice; and yet much less, or none, for the punishment or prevention of heresy, infidelity, or schism; all which are now at a greater height in England than they ever have been in any Christian country. Unbelievers have remarkably increased there since the Revolution in 1688, without any thing considerable having been enacted, or at least carried into execution, against them; and the separation of those Protestant sectaries who dissent from the church of England has been even encouraged; for several laws made against them in queen Anne's reign; viz. the Schism and the Occasional Conformity Acts have been repealed; nor have the bishops taken proper care to oblige them to subscribe to the Thirty-nine articles of the church of England, which is a condition of the toleration. There is likewise an act passed every year, which, in effect, takes off the obligation and restraint arising from the Test Act; and they have been permitted, if not publickly encouraged, to propose many and great alterations in the liturgy, &c. of the church of England; which, with some other concessions, actually gives them more liberty, in several respects, than even the clergy of the established church. From whence they have been led to hope, that they may, in length of time, prevail against the national establishment of religion in the church of England, either by quite subverting it, or forcing themselves into it without forsaking their own tenets. And, while the sectaries are thus indulged and cherished, the severe laws against Roman Catholics have been suffered to remain, and their estates have been subjected to new pecuniary impositions; all which things shew the great iniquity of our proceedings, which, indeed, is such, that there is reason to believe that the providence of God will not suffer such an establishment to be lasting, but will, in his own good time, restore the Roman Catholic religion here, till which there will be no firm quiet or happiness among us.

IN answering to these objections, we cannot deny, but that vice is at a great height among all ranks of men in this nation, notwithstanding we have laws, as well ecclesiastical as civil, to restrain it; for in a nation of so much freedom, and so much wealth in private hands, such laws can hardly ever long be strictly executed. Men of rank and fortunes will excuse and connive at each other; and against such persons the laws, whether ecclesiastical or civil, are with great difficulty put in execution: but it may be alledged to the advantage of our nation taken in general, that it hath as little of any sort of vice as the other greater nations; it hath certainly much less of the malignant vices of revengefulness, murder, oppression, &c. And the expence our countrymen are at in gratifying their sensual appetites does not hinder them from being, at the same time, very charitable to all who are in want, or any kind of distress; which charity hath of late been remarkably shewn, even to the Roman Catholics of Portugal after the earthquake, and to the French prisoners among us; and there is otherwise a great deal of public spirit. We own, indeed, that such charity will not atone with God for our vices. Our clergy represent this to the people very strongly; they exhort them to virtue and regularity of life; but at present they cannot, indeed, do much more. Our ecclesiastical discipline hath now but little effect upon persons of rank; neither has it, indeed, much effect in France or Spain. It seems impracticable to restore such a form of discipline as obtained in the first ages of the church. St. Austin, even in his time, was sensible of this. When the temporal powers were come into the church, in such circumstances, mere excommunication, which is the only ecclesiastical penalty, will have little or no effect upon men who do not value it; and therefore it is expedient, that it should be made use of with prudence and caution, and that men should, by reason and scripture, be brought into a religious temper of mind; which temper, indeed, they must have, in order to please God.

BUT the Romanists say, that among us heresy, and even infidelity, are so very rife, that it is no wonder that Christianity has so little force to restrain ill practice; they have remarkably increased since the Revolution in 1688, without any thing being done to prevent or punish them.

them. On the contrary, several persons who have professed and published, or abetted them, have been suffered to do it with impunity.

Now here one may justly say, that these allegations are not true. By our laws in force, no person can bear even any civil office without professing Christianity, even according to the doctrine and practice of the church of England. And, since the Revolution in 1688, there has been a law made for the punishment of open irreligion and heresy, especially against the doctrine of the Holy Trinity. And this law is still in force; it has not indeed been strictly executed, for which omission I must own I am not sorry. You have seen my reasons in the second of these tracts. But the continual existence of this law in force shews, that our governors are not disposed to countenance heresy or irreligion, though they forbear to go to the utmost rigour against them; nor are there more grounds for the reproaches the Romanists make against our governors for encouraging and cherishing the Protestant dissenters, and their supposed ill designs against the establishment of the church of England. It is true, that in the beginning of the reign of George the First the Schism and Occasional Conformity Acts, which had been a little while before made against the Protestant dissenters, were repealed; because the former was against their natural right, in taking from them the education of their children. Every father hath an obligation, and a right from nature, to take care of them, not only to provide for them the necessaries of life, but proper instructions as to virtue and religion, as long as they are not able to judge for themselves. You will say that they are the children of the sovereign and of the public, who have a right to judge for them, and not the natural parent; but I say that the right of the natural parent was the original right, antecedent to any civil societies, or rights derived from them. The civil magistrate has no more a right to judge for the infants, than he has to judge for the adult parent of them; I have shewn he has not this latter right; and, if the parent has a right to judge for himself about religion, he must also have a right to judge for his infant child, who is a part of himself. There is no necessity derivable from the interest of civil societies, that the governors of them should judge for all infant children [h].

[h] See Locke on Education.

AND the other tended to make them more disaffected to the church of England, and less inclined to constant conformity with it, which there was, and is, some good probability, numbers of them may be, by the practice of occasional conformity, in time brought to, after having had opportunities, by this conformity, to wear off, and lay aside in great measure, their prejudices and prepossessions against its way of worship, &c.

THE only probable and effectual way to do this, is to treat them with candour and gentleness, or at least with justice; which last, they think, is still due to them, with regard to their not being obliged to subscribe to the Thirty-nine articles of the church of England. It is true, indeed, this was, at first, made and remains a condition of their being tolerated or indulged: but this condition was inserted into that act, when the nature of religious toleration had not been so fully considered as it has been since. The dissenters now alledge, that, as they have not the benefit of the civil establishment, nor do conform to it, they cannot justly be obliged to subscribe or assent to the articles of it: whoever attempts to shew they have no right in this claim, will perhaps find it hard to maintain his purpose; so that our bishops are not justly blamed by the Romanists for conniving, as far as they are concerned, at the dissenters not subscribing to the Thirty-nine articles; nor for their being willing that some concessions should be made even to the Quakers, as to their being exempted from swearing in courts of judicature, and being relieved as to the manner of recovering tithes from them. The former of these concessions was made chiefly for the benefit of other subjects, whose properties often might depend on the legal evidence of Quakers; and the other proceeding as to paying tithes was likewise designed for the convenience and ease of the clergy as well as of the Quakers.

IF the dissenters have as great, and even in some respects greater, liberty than the clergy of the church of England, there are some circumstances which make this indulgence expedient to be granted; in particular that they may have no shadow of ground to complain of the want of any liberty necessary to their spiritual interest. But, as to the charge the Romanists make upon our civil governors since the Revolution, that they have given the dissenters encouragement to hope, that,
by

by the favour and assistance of the government, they shall be able by degrees, and in no great length of time, to prevail against the establishment of the church of England; this charge is made, not only without any sufficient evidence, but even contrary to known and remarkable fact; for a few years ago, when the dissenters had formed a design to procure the repeal of the Test Act, and applied strongly to the then ministry and the house of commons for that purpose, they found no encouragement from either of them. There were then among the king's ministers some of the ablest men that this age has produced, and who could not only judge extremely well of the domestic interests of this nation, but who were at the same time great friends to liberty, and to the moneyed interest in the city, in which last several of the dissenters had a considerable weight. Yet, notwithstanding these circumstances, those ministers would not be induced to favour the dissenters in their attempt against the Test; they may justly be supposed to have seen that the consequence of the repeal of it would be adding great strength to the dissenters against the establishment; that it would enable them to come nearer to an equality of power with the church, and to push the ministry more strongly against it; and that such a state of things would either end in a subversion of the national establishment of the church, or contribute to the increase and continuance of religious factions, which are the most violent of any. Both of these, they saw, would or might be of extremely ill consequence; the contests would always continue, till one of the parties should get the superiority; and if that of the dissenters should obtain it, the civil constitution, in which the true liberty and happiness of the nation depends, would soon be weakened, and lose the balance that preserves it; for, by the prevalence of the dissenting scheme, the supremacy of the crown in ecclesiastical matters would wholly be lost, and the democratical spirit, which has been visibly growing very much for two ages past among us, would be very much, and probably too much, augmented; and in proportion to the increase of it, the respect to the crown, and to the nobility, would certainly decrease, at the same time that the wealth, and consequently the great influence of the trading part of the nation upon the burghs, would be continually receiving additions. On these and other accounts the ministry judged, that giving way to the design

of the dissenters against the Test, and consequently to the growth of their civil interest and power, would not be for the interest of the Protestant establishment considered in general; and accordingly they strongly opposed it, so that it miscarried in the house of commons, and has never since been attempted.

As for the proposals of the candid disquisitioners, for making alterations in the liturgy and form of public worship, in order to give some satisfaction to the dissenting laity, and engage them more easily to come into the church; one may truly say, first, these projects have not had their rise from the crown, or its ministers; they came from private persons, who, in that point, were more forward than they ought to have been, and discovered more zeal than knowledge of mankind, or of the true interest of the present establishment; it never appeared that they had any encouragement, either from the governors of the state, or of the church. It is probable, indeed, that hardly any ministry, that are true friends to liberty, and to the present establishment of the crown, and to the lasting good of their country, would be against them, supposing they could be morally certain, that any considerable part of the dissenters would be wrought upon by them, to come into the church; or that these alterations could be made without occasioning animosities, discords, and divisions among the members of our own church. Upon this prospect, it is probable, that not only the ministers of the crown would be disposed to give way to them, but even the bishops and clergy might be induced to do the same, for the sake of unity and peace. Several of the most eminent bishops, and other clergy of our church, have formerly, at different times, declared their judgment in this way, with respect to admitting some alterations, and the present bishops and clergy might, perhaps, be disposed to imitate their examples, if it were not for those very material objections against it, hinted at above, and which will be considered more at large hereafter in their proper place.

FROM what I have said, you may see that there is no reason, from any thing that hath been done among us since the Revolution, or the accession of the present royal family to the throne, to apprehend, as the Romanists insinuate, that there has been, or is, any design against our ecclesiastical establishment. And, as to their last charge upon us, that

that we continue the rigorous laws against the Romanists, and have, not long ago, laid some heavy impositions upon them, to the great diminution of their property, and the reasonable liberty that ought to be allowed them as Englishmen born; we can truly say, that these laws were originally designed, not so much against them on account of their religion as being false in itself, as to prevent those ill designs and attempts against our ecclesiastical and civil state, in which the temporal interest of their religion engaged them. It is well known what repeated and dangerous attempts of that kind there were in the reign of queen Elizabeth, and of James the First, which made it necessary for those princes to proceed with just severity against those bigotted Papists, devoted to the court of Rome, and, by making laws with severe penalties, to deter other Papists in future times from the like seditious and traiterous proceedings. But since this violent spirit has, in some degree, subsided among the Papists, and numbers of them have appeared willing to acquiesce under, and even to support, the civil establishment, not only in England, but even in Ireland; they have accordingly been treated with proportionable lenity and indulgence: they have not been hindered from a private performance of their worship, nor even from publishing books in defence of their cause; nor have the double taxes been strictly levied upon them: they have been treated with civility and respect, upon the foot of other persons of their rank. This has been acknowledged by the Vindicator of the unerring authority of the church of Rome; and is well known to those who are acquainted with the state of things in England.

UPON the whole, we may truly say, that in England, at present, every one is allowed freely to inquire into, and judge as he sees fit, of all the grounds of his belief and practice in matters of religion. He has all proper advantages and assistances from books, which are allowed to be published of all kinds, from the preaching of men of different sects, and from private advice, in order to his doing it with success: and he is allowed to profess and practise, and privately to worship God according to his judgment, whatever it be, provided it doth not tend to disturb or weaken the civil state.

THE terrible writ *De hæretico comburendo*, which always hung like a flaming sword over the heads of our ancestors, has been taken away

ever since the reign of Charles II. And though, indeed, there are one or two other laws in force, that subject some persons, whom the law deemed to be heretics or unbelievers, to some heavy penalties; yet these are not now put in execution, nor are likely to be so, unless any men should, by their very great temerity and insolence, draw upon themselves a prosecution: otherwise, if a man should be suspected or known to have some opinions which our church condemns as false and heretical; yet, if he behaves modestly, prudently, and quietly, there seems to be no disposition in the governors, either civil or ecclesiastical, to encourage informations or legal proceedings against him. He may continue in his opinions, and yet enjoy his property, his liberty, and all other benefits of other peaceable subjects.

Now when one compares this state of things with that of other countries, where, as soon as a man is but suspected of heresy, he is informed against, prosecuted, imprisoned, and perhaps burnt alive, or at least banished out of the country, we may think ourselves very happy, in enjoying the liberty granted by the state to all professions of religion.

TRACT VI.

The nature of supremacy, in matters ecclesiastical, vested in the crown.

AS great weight is laid on the declarations, which, the Romanists say, our laws make, that all the ecclesiastical jurisdiction of our bishops flows originally from the crown; it will be necessary to enter into the discussion of this objection more minutely.

THE first point to be considered, is the nature of supremacy in matters ecclesiastical, vested in the crown by the act of 1 Eliz. chap. i. Now that the meaning of this act was not, as the Papists affirm, to declare that the king had a right to preach or administer the sacraments, or to ordain, or inflict church censures with spiritual effects, we may be sufficiently assured; because, that statute refers to and revives those acts of Henry VIII. particularly 26 Henry VIII. chap. i. by which the ancient jurisdictions belonging to the crown were restored and united to it; and the king, having been acknowledged to be supreme head on earth of the church, was invested with full authority to visit, repress, and reform all errors, heresies, &c. These same words are used in the oath of supremacy appointed by the first of Eliz. It is, therefore, reasonable to suppose, that this latter act is to be understood, as to the spiritual authority it intended to confer upon the crown, in the same sense with the former, (see Bacon on Governm. part ii. p. 161.) which, indeed, queen Elizabeth soon after declared in her Admonition, which was referred to and confirmed by an act of parliament. Now Henry the Eighth declared publicly, that he did not pretend, by this act, or by any other way, to have a right to administer the sacraments, &c. or to confer the same right upon others: but, on the contrary, acknowledged, that the bishops and clergy derived these merely spiritual authorities immediately from Christ [i]. For in the Institution of a Christian man, published by the especial command of that king, and subscribed by twenty-one bishops, and

[i] In a commission granted by king Henry the Eighth, to the bishop of Hereford, he is licensed even to ordain. But no prince ever pretended to convey the spiritual character; ergo, all that can be meant here, is, that the bishop is licensed to exercise this spiritual part derived from Christ, so as that it shall have a temporal effect; and the persons so ordained shall be acknowledged by the state in quality of priests.

many of the clergy; it is asserted, (fol. 39.) "that Christ and his apostles did institute and ordain, in the New Testament, that, besides the civil powers, there should be also continually in the church militant certain other ministers and officers, who should have special power and authority, and commission, under Christ, to preach and teach, to dispense and administer the sacraments, to consecrate the blessed body of Christ, to loose and absolve, to bind and excommunicate, to order and consecrate others in the same room and office." And *ibid.* fol. 50. "We may not think that it doth appertain to the office of kings, but priests, to preach, teach, and administer the sacraments, to absolve, excommunicate, and do such other things belonging to the office and administration of bishops and priests."

AND even in the commissions by which some bishops in the reign of Henry the Eighth held their bishopricks of him during pleasure, and had his license to execute their spiritual functions, there is a clause, in which he acknowledges them to have a spiritual authority not derived from the crown but from Christ. *Præter et ultra ea, quæ tibi, ex sacris literis, divinitus, commissæ esse dignoscuntur* *.

DURING the reign of his son Edward the Sixth, in the ordinal then composed for ordaining of bishops, the archbishop says to the bishop, who is to be consecrated, "Will you maintain and set forward, as much as in you shall lie, quietness, and love, and peace among all men, and such as be unquiet and criminous within your diocese correct and punish, according to such authority as you have by God's word, and as to you shall be committed by the ordinance of the realm?" The bishop answers, "I will, by the help of God." This office was, in the reign of Edward the Sixth, ratified by act of parliament. It was again expressly confirmed in the reign of queen Elizabeth, as indeed it had been virtually confirmed before by that act in the first year of queen Elizabeth, which revived Edward the Sixth's book of common prayer.

Now Henry the Eighth, in the Institution of a Christian man, before quoted, (fol. 50.) says, "We must think and believe that God hath made Christian kings to be as chief heads and overlookers

* Apol. for the Clergy, p. 19. Lesley's Regale, 62, 63.

“ over the said priests and bishops, to cause them to administer their
 “ office and power committed unto them purely and sincerely; and,
 “ in case they be negligent in any part thereof, to cause them to sup-
 “ ply and repair the same again:” referring to which, the Queen to
 the same effect, though more in general, says, “ That her claim is,
 “ under God, to have sovereignty and rule over all manner of persons
 “ born within these her realms and dominions, and countries, of what
 “ estate either ecclesiastical or temporal soever they be, so as no foreign
 “ power shall or ought to have any superiority over them.” Accord-
 ingly, in the 37th of the Thirty-nine articles confirmed and autho-
 rised by that Queen in parliament, 13 Eliz. chap. xii. it is said, “ We
 “ do not give to our princes the ministering of God’s word or sacra-
 “ ments, but only that prerogative which we see to have been given
 “ always to godly princes in the holy scriptures by God himself; that
 “ is, that they should rule all estates and degrees committed to their
 “ charge by God, whether they be ecclesiastical or temporal; and
 “ restrain, with the civil sword, the stubborn and evil doers.” From
 all which passages it is evident, that the authority attributed then to
 queen Elizabeth, by the oath of supremacy [k], was not properly spi-
 ritual in any case; but only to take care exclusively of any other sove-
 reign or foreign power, that the clergy of this realm should do their
 duty by professing and practising themselves, and teaching the people
 true religion; and, if they failed to do it, then to admonish and in-
 flict proper penalties upon them, viz. admonition, suspension, depri-
 vation, &c.

AGAINST this account of the nature of the king’s ecclesiastical su-
 premacy, I am sensible that some objections may be raised from the
 expressions used in several statutes in the time of Henry the Eighth
 and queen Elizabeth, viz. from 26 Henry VIII. chap. i. which says,
 “ that the king, &c. shall have full power, from time to time, to visit,
 reform, correct and amend all such heresies and enormities, whatso-
 ever they be, which, by any manner of spiritual authority or jurisdic-

[k] To this same purpose, an explanation of it was given by archbishop Usher before, and by order
 of, the privy council of Ireland; for which explanation he had the thanks of king James the First. See
 Parr’s life of archbishop Usher, p. 19.

tion, ought to or may lawfully be reformed, ordered, &c. any usage, custom, foreign laws, foreign authority, prescription, or any thing to the contrary hereof notwithstanding." From 37 Henry VIII. chap. xvii. in which it is said, "that the archbishops and bishops, archdeacons, and other ecclesiastical persons, have no manner of jurisdiction ecclesiastical, but by, under, and from your royal majesty. § 16. Declaring its intent, that all the usurped and foreign power and authority, temporal and spiritual, may for ever be clearly extinguished, and never to be used or obeyed within this realm or any other of your majesty's dominion or country, may it please your highness, that it may further be enacted, by the authority aforesaid, that no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall, at any time after the last day of this session of parliament, use, enjoy, or exercise any manner of power, jurisdiction, superiority, pre-eminence or privilege, spiritual or ecclesiastical, within this realm, or within any other your majesty's dominions or countries that now be, or shall hereafter be; but from henceforth shall be clearly abolished out of this realm, and all other your highness's dominions for ever, any statute, ordinance, custom, constitutions, or any other matter or cause whatsoever to the contrary in any wise notwithstanding." § 17. "And that also it may likewise please your highness, that it may be established and enacted, by the authority aforesaid, that such jurisdictions, privileges, superiority, and pre-eminence, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be, exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, and enormities, shall for ever be united to the imperial crown of this realm."

FROM the 37 Henry VIII. chap. xvii. § 4. which enacts, "that doctors of the civil law, which shall be made chancellors, vicars general, &c. may lawfully execute and exercise all manner of jurisdiction commonly called ecclesiastical jurisdiction, and all censures and coercions appertaining, or in any wise belonging, unto the same, albeit

such

such person or persons be lay, married or unmarried, &c. which act also, § 1. declares the king to be a layman [1].”

FROM the 25 Henry VIII. chap. xix. which enacts, “that in case of appeals to be made from the archbishops courts, (§ 4.) or from places exempt, (§ 6.) into the king in chancery, a commission shall be directed under the great seal of such persons as shall be named by the king’s highness, his heirs or successors; which commissioners shall have full power and authority to hear and definitively determine such appeals, and the causes, and all circumstances concerning the same: and that such judgment and sentence, as the said commissioners shall make and decree in and upon any such appeal, shall be good and effectual, and also definitive.”

FROM 31 Henry VIII. chap. xii. § 23. which enacts, “that such of the late monasteries, &c. and all churches and chapels to them belonging, which, before the dissolution, &c. were exempted from the visitation, and all other jurisdiction of the ordinary, within whose diocese they were situate, shall from henceforth be within the jurisdiction and visitation of such person or persons as by the king’s highness shall be limited or appointed.” In consequence of which statute, laymen, in many places, became entitled to episcopal jurisdiction by grants from the crown.

FROM 5 Edward VI. chap. iv. which enacts, § 2. “That if any person or persons shall smite or lay violent hands upon any other, either in any church or church-yard, that then, *ipso facto*, every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ’s congregation.” See Dyer, 275. Croke, Eliz. 224. 219.

AND from 3 James I. chap. v. § 11. which enacts, “That every Popish recusant convict shall stand and be reputed, to all intents and purposes, disabled, as a person lawfully and duly excommunicated according to

[1] By the first and second of the canons of 1603, all clergymen are obliged to assent to, and maintain, all laws for the restoring to the crown of this kingdom the ancient jurisdiction over the state ecclesiastical.—Ibid. Archbishops, bishops, &c. have no manner of jurisdiction ecclesiastical, but by union, and from your royal majesty.—Ibid. Your majesty, to whom, by Holy Scripture, all authority and power is wholly given to hear and determine all manner of causes ecclesiastical, and to correct all vice and sin whatsoever, and to all such persons as your majesty shall appoint thereunto. See how far this act, which was repealed by Philip and Mary, was revived by 1 Elizabeth, chap. i. § 12.

the laws of this realm, until—and that every person, sued by such person so disabled, may plead the same in disabling of such plaintiff, as if he or she were excommunicated by sentence in this ecclesiastical court.”

THESE statutes the Romanists are vehement in urging against us, as importing that all kind of spiritual or ecclesiastical authority and jurisdiction are united to the crown of these realms.

AND the Romanists are not the only objectors in this point. We have persons in England who profess to be Protestants, and very zealous ones, who yet agree with the church of Rome, in alledging that these statutes fully prove the crown to be entitled, by law, to all kind of ecclesiastical authority and jurisdiction.

BUT these Protestant objectors would do well to consider, whether our laws, if taken in this sense which they contend for, may not be found to affirm things false in themselves, and to vest powers in the crown repugnant to the institutions of the Christian religion. If this should appear to be the case, the civil sanction of these laws would not be sufficient to vindicate them. They will, notwithstanding that sanction, lie equally open to the objections of the Romanists, and be condemned even by many serious Protestants, who, upon their account, may become disaffected to our whole establishment, and be liable to be drawn off from it by the Romanists; who indeed, upon that view chiefly, are so earnest in fixing this sense upon these laws. Every one, therefore, who is a true friend to our constitution, before he agrees with the Romanists in fixing this sense upon them, ought seriously to consider the consequences of it; viz. Whether our laws, if understood in this sense, will not affirm things false and wrong; and, if this will be the consequence, he ought from thence to be put upon considering, whether this be the necessary sense of them or not; or whether they may not fairly bear a different one. Not that one ought from these considerations to put a forced or unnatural sense upon the expressions in our laws; for that would neither take off the objections of the Romanists, nor serve to any other good purpose: but these considerations may be of some weight, *a priori*, if the expressions of our laws be doubtful, to induce us to think it probable, that the legislature could not mean them in such a sense; because it is not supposable that they should

should have been mistaken in such important matters; and much less is it supposable that they would, knowingly, pretend to vest such powers in the crown, as they were sensible Jesus Christ had granted to his clergy only.

WHETHER these considerations have occurred to our Protestant objectors I don't know: but that they may have a proper weight with you, added to those which have been above-mentioned, in order to make you form a right judgment of the sense of our laws in this point, I must desire you to recollect what has been said in the first section of these papers, about liberty of profession and practice in matters of religion. I have there shewn, that every religious society, whose doctrine and practice are altogether inoffensive to the civil state, and which hath no establishment for it, hath a right to be exempted from any interposals of the civil governor, with regard to its doctrine, worship, or ecclesiastical government.

FROM whence it follows, that if the civil government in England has any such right of interposing, as our Protestant objectors suppose, in regulating the government and discipline, &c. of our church; it must be derived from the consent and concessions supposed to have been made by our church to the state, on account of the temporal advantages she enjoys from it.

AND there is reason, indeed, to suppose that the church has made divers such concessions.

SHE has consented, that the king's judges should send writs of prohibition to stop the exercise of her discipline in many cases, and mandates to absolve persons excommunicated in others; and that they should be appealed to from her sentences.

SHE has consented that our kings should exempt some persons and places from her jurisdiction.

THAT they nominate persons to be chosen bishops, and order their consecration: and that they and others of the laity should present persons to many spiritual cures.

THAT her bishops and clergy should not at any time meet or make any canons without the king's licence, and subsequent confirmation.

IN these, and perhaps in some other points, the church of this nation has made concessions to the civil government.

AND it might lawfully do so, for as long a time as the civil governors should make a right use of these concessions; viz. to the benefit of the state without hurting religion or the church. For that this they may do is evident: for instance, they may not use the power of issuing prohibitions to stop the exercise of the church's discipline, nor require any persons to be absolved in any cases, but when it is expedient so to do. They may not exempt any places from episcopal jurisdiction, but for weighty reasons; and in such cases it may be lawful for the church to forbear, for a time, the exercise of her discipline and jurisdiction; for though she has it by divine right, yet she is not obliged to exercise it at all times. It may sometimes be expedient to forbear the exercise of it, in view to obtain greater advantages to religion by forbearing it.

IN like manner, though the church has a right to nominate her own officers, as bishops, &c. yet as the civil government may also nominate fit persons for those trusts, the church may lawfully consent to receive them upon the state's nomination, as long as they nominate persons against whom there lies no important objection.

AGAIN, though the church has a right to make any proper regulations concerning her own spiritual affairs inoffensive to the civil state, yet, as the making such regulations is not at all times necessary, the church may consent that her clergy shall not meet, nor make any canons without the licence of the civil governor, nor that any of them shall be valid without his subsequent confirmation; for, as the making canons is not at all times necessary, it may at some times be forbidden for a considerable space of time, or subjected to the will of the civil governor, upon supposition that he will suffer it to be done when it is really expedient for the church.

As the giving up their power to the civil governor may be very expedient to the state, in order to its preserving a proper influence on the people, and hindering any undue practices from the clergy, if they should at any time be factious and seditious, to its disadvantage; so, on the other hand, there may be a real and great expediency to the church, that they should be given up, in order to gain or preserve the

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continuance of that protection and favour, and support those revenues, dignities, temporal powers, and other emoluments, which the church receives from the state, and which may be made very conducive to the maintenance and promotion of true religion. Upon this common expediency, I say, to the church, as well as to the civil government, the church may be lawfully warranted to make these concessions. But these ought not to be, as they often are, used as arguments of the civil state's having naturally and originally a right in church matters; because, as I have shewn, the state's right in these points is not original, but derived only from the concessions of the church: and farther, because there are some points in which the church neither has, nor can lawfully make, such concessions to the state.

ONE of these points is, the right of administering the sacraments in the congregations of Christians. That, the thirty-seventh article says, we give not to our princes. This Jesus Christ hath ordained to be done by persons selected and solemnly set apart to that function; the doing it is appropriated to that sacred character, and cannot be committed to any that are not vested with it.

ANOTHER of these rights, incommunicable to the civil governors or to any mere layman, is, the right of ordaining or consecrating persons to these sacred functions. This right our Lord first exercised himself in the choice of his apostles; and committed the same to them, with a command that they should appoint and ordain others, as these should still others, and so on in perpetual succession. As in the Jewish law the priesthood was to descend by generation, and no one was to take that office who was not so intitled to it; so, in the Christian religion, the like sacred function was to be conveyed by imposition of hands, by persons who had received that same imposition from others, and so on till it came at last from the apostles and our Saviour himself. This imposition of hands no one therefore can lawfully give, who has not received it; and therefore no civil governor, as a layman, can have this right to ordain others [m], unless he has himself received imposition

[m] The 36th article in effect acknowledges this, when it saith that the book of consecration of archbishops, &c. doth contain all things necessary to such consecration and ordering, &c. The queen's Injunctions referred to by the 37th article, and that article itself, deny that the kings or queens of this realm may challenge

tion of hands from a qualified person: and in that case he ceases to be a layman. I here speak of ordinary cases, where such imposition of hands from qualified persons is possible to be had. If it be not possible, then how far God may dispense with the want of it, is a different point: but, where it can be had, there is reason to think, that God having made this ordinance, will insist upon it, and so will not suffer laymen to be vested with this right.

A THIRD point not possible to be communicated to laymen, is the authority to inflict ecclesiastical censures with spiritual effects. Jesus Christ having instituted his church as a society distinct from the state, and required that certain conditions should be performed, in order to mens being admitted and continuing members of it, and having instituted governors to see that these conditions be performed; he has accordingly vested them with a power of ejecting those persons out of the society, who do not perform the conditions required. This power was necessary to the maintenance of order and purity in the society; and therefore was conferred upon the governors of it: and, in order to give a weight to their censures, Christ has declared, that whosoever is bound by them on earth shall be bound in heaven, and whatsoever shall be loosed on earth shall be loosed in heaven: the meaning of which is, that when the governors of the society duly eject persons out of it, their censures shall be ratified in heaven; and the persons offending shall not be restored to the spiritual communion with Christ[n], even though he repent, unless he also offers due satisfaction to the

challenge authority or power of ministry of divine service in the church. Now, if they have not a right to minister themselves, can they have a right to ordain or qualify others to minister? *Nemo dat quod non habet.* What is the reason why they cannot minister themselves? Is it not because they have not been ordained to it? If that be the reason, the same will hold why they should not ordain others. See Apology for the Clergy, p. 15, 16.

[n] That excommunication justly inflicted hath spiritual effects, our law allows; for article 33 says, "That that person which, by open denunciation, is rightly cut off from the unity of the church, and excommunicate, ought to be taken, of the whole multitude of the faithful, as a heathen and a publican, until he be openly reconciled by penance, and be received into the church, by a judge that hath authority thereunto." And see the passage of lord Coke's 12 Report, p. 79. concerning the difference between the civil and ecclesiastical judges, where he says, that corruption in the said spiritual and ecclesiastical courts is more dangerous than in the officers in the temporal court: for the temporal judge commits the party convict to the gaoler, but the spiritual judge commits the person excommunicate to the devil.

Before the Reformation, the legislature, upon several occasions, required the archbishops and bishops to excommunicate persons; viz. those who should violate Magna Charta, p. 527 of Coke's 2d Inst. and *ibid.* p. 536. See also Cotton's Abridgment, Index, voc. *Excom.*

church. But that if he does repent, and also makes or offers due satisfaction to the church, so as to be absolved by it, then he shall certainly be absolved in heaven.

Now this right or power, which was given to the governors of the church, as necessary for the preservation of order and purity in it, cannot, by them, be alienated or made over to civil governors; because they have no warrant in the Scripture to do it, and it is in the nature of the thing incongruous so to do. For what reason could there be to suppose, that God should permit any spiritual effects to attend the exercise of this power by civil magistrates, to whom he has not given it, nor warranted others to transfer it? Having been designed only to secure the purity and order of the religious society, it cannot warrantably be exercised by any but by the governors of it.

THESE, which are powers plainly incommunicable to princes or any other laymen, shew that all spiritual power and jurisdiction is not derived from them.

OUR princes and our laws themselves acknowledge it. The office of ordination, 37th article, and queen Elizabeth's Injunctions, referred to and confirmed by parliament.

ACCORDINGLY, they have never pretended to assume to themselves, or commit to any layman, the administration of the sacraments, or the ordination of pastors. And lord Coke acknowledges, that, if they should nominate lay-commissioners to exercise ecclesiastical censures, the nomination would be wrong or faulty.

THUS the reason of the thing, the declarations of some of our laws, and those of the latest upon this subject, and common practice, agree in shewing that all ecclesiastical authority and jurisdiction is not derived from the crown, or united to it.

AND from hence we may justly conclude, that it could not be the intention of our legislators, in the acts of Henry VIII. and Elizabeth, above-mentioned, upon which the Romanists and others ground their objections; it could not, I say, be the intention of those acts, that all ecclesiastical authority and jurisdiction is united to the crown, and derived solely from thence.

BUT what other sense can be put upon them, you will say, without a force upon the words? Does not 26 Henry VIII. ch. i. say, that the
king,

king, &c. shall have full power to visit and correct all such heresies, &c. as by any manner of spiritual authority or jurisdiction ought, or may lawfully be reformed? I answer, Yes: he may correct all such, by an external, political, coercive power, which, no doubt, he has in him.

BUT does not 37 Henry VIII. chap. xvii. affirm, that archbishops and bishops, &c. have no manner of jurisdiction ecclesiastical, but by, under, and from his royal majesty? Yes[o]: and it is true they have none of this external and coercive jurisdiction, with temporal effects, but by and from his majesty's permission. And that, indeed, is all which the law considers as being properly jurisdiction; for though, indeed, the law does suppose, as I have above shewn from the ordinal for consecrating bishops, that they, the bishops, have some power derived from Christ for correction of others; yet the spiritual effects of that power not being visible nor cognizable by the temporal judges, they therefore never took any cognizance of them, but only of the temporal and visible effects of the bishop's power; this they only meant by lawful or legal jurisdiction [p], though even the bishop's jurisdiction, attended with spiritual effects, they might consider as being also derived from the crown, in regard that the crown permitted the exercise of it.

[o] But then a later law, as I have above observed, does expressly allow, that they have some power to censure and punish by God's word: and the law ought not to be supposed to contradict itself; and therefore this act in Henry the Eighth must necessarily be understood only of external coercive jurisdiction; and it is true that the bishops, &c. have none of this, &c.

[p] Jurisdiction properly signifies an authority to take cognizance of, and determine in a public and judicial way, and with legal forms and effects, any controversies or causes that are litigated, and to censure or acquit any persons, according to laws before made concerning those matters.

Now, though the bishops and clergy have originally in themselves derived from Christ an authority to judge in church matters, and of persons as concerned in them; yet, since the establishment of Christianity in this realm, and, as long as that lasts, they have no right to exercise this authority in a judicial way, in this realm, but from the king; because, by the supposed convention between the church and civil government, by which the exercise of this spiritual authority is attended with temporal penalties and effects, which of itself it had not; it was agreed, that this spiritual authority should not be exercised in a public judicial way, but by the king's permission or consent, and with such limitation as he or the law should put upon it: and, in regard to this state of things, it may be properly enough said, that the bishops, &c. have no spiritual jurisdiction that is attended with legal effects, nor any that can be exercised here, but by and from the king's permission. And this is what our laws mean.

This was plainly the sense of our judges, and of the legislators themselves before the Reformation: they allowed that the bishops, and the pope too, had a spiritual authority in several cases; this is plain from the notion of the whole church at that time; but not that they should exercise this authority here, but with certain circumstances. And, if they did at any time exercise it otherwise, they regarded the exercise of it as null. This appears from several cases in the year books.

THE same sense may be justly put upon 1 Eliz. chap. i. sect. 17. which asserts, that such jurisdictions, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be, exercised or used for the visitation of the ecclesiastical state or persons, or for the reformation of all manner of heresies, &c. shall be for ever united to the imperial crown of this realm.

THE ecclesiastical authority formerly used for the correction of ecclesiastical and other persons, of which the law took cognizance, was, as I said, only the external and coercive authority attended with temporal effects. Of the spiritual effects, though they at the same time supposed there might be such, yet they would not take any notice, nor consider them at all; not even in the times when popery prevailed here. This appears from divers cases in the Year books, and particularly from the following remarkable one: there had been an appeal made to the pope in some cause litigated between the subjects of this realm, and of ecclesiastical cognizance. The pope, having tried the cause, awarded costs to one of the parties, and sent a commission of delegacy to the archbishop of Canterbury to cause them to be levied. The archbishop, upon the refusal of the party who was to pay them, excommunicated him for contumacy: the law, in those times, did, no question, admit that the archbishop's sentence of excommunication, when just, would be attended with spiritual effects; but whether it was so or not, or whether it was just or not in that case, the judges would not examine. It was a maxim in law, that the pope's excommunications, whatever spiritual effects they might have, were not to be at all regarded by our law, nor suffered to have any temporal effects here; that is, he was not allowed to have any ecclesiastical jurisdiction in this realm; and though the archbishop, in other cases, had such spiritual jurisdiction by law, yet, in this case, as he acted in pursuance of the pope's commission and sentence, the judges would not allow even him to have any legal ecclesiastical jurisdiction [q]. What effects his and the pope's sentence might have *in foro spirituali*, the judges

[q] They would not allow an excommunication by any of our own bishops to be of force, but against persons within his own diocese: nor even in his own diocese, unless, in his certificate of it to the temporal courts, he specified the particular cause of it, that they might know whether it was legal or not.

would not consider: but visible, legal, and temporal effects, they would not allow them to have any in this realm. This was the notion which the law had of spiritual or ecclesiastical jurisdiction long before the Reformation. And all ecclesiastical or spiritual power and jurisdiction, in this sense, is truly said to be united to the crown; and, indeed, to have always been in it. Which consideration made lord Coke, and others of our chief lawyers, affirm, that this [r] 1 Eliz. chap. i. was only a declarative law reviving and restoring the ancient ecclesiastical authority of the crown, and not adding any new authority to it. And this undoubtedly is true, if the act be understood in the sense I here put upon it, as asserting only an external coercive jurisdiction in ecclesiastical causes to belong to the crown: for such a one was always affirmed and acknowledged to belong to it, even before the Reformation. But if this were to be understood to affirm, that all that internal spiritual authority, which Christ gave to his apostles and their successors, in every ecclesiastical matter, was inherent in, and could be justly exercised by, the crown or its delegates; it is most certain, that this was not the notion of any of our judges or legislators before the Reformation. Our laws did then most evidently suppose and assert the contrary. Since, therefore, this act is allowed to be only declarative of the ancient spiritual authority and jurisdiction of the crown, and not to vest in it any new powers; it follows, that it must be taken in the sense I have here put upon it, as asserting only an external, coercive, political authority in spiritual things, and over spiritual persons: and this authority may very truly and consistently with the institutions of the gospel, and with the spiritual authority from thence derived to the clergy, be allowed to our princes; so that, in this sense, there is no just cause for the Romanists to object against the supremacy in ecclesiastical matters vested by our laws in the crown of this realm.

NOR had those prelates in the first year of queen Elizabeth, to whom the oath of supremacy was offered, any just cause to refuse it. That oath asserted only, “ that the Queen’s highness was the only supreme governor of this realm, and all other her highness’s domi-

[r] The act of 1 Eliz. chap. i. is intituled, An act to restore to the crown the ancient jurisdiction over the estate, ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same.

“ nions and countries, as well in all spiritual or ecclesiastical things or
 “ causes, as temporal; and that no foreign prince, person, prelate,
 “ state, or potentate hath or ought to have any jurisdiction, power,
 “ superiority, preheminance, or authority, ecclesiastical or spiritual,
 “ within this realm: and, therefore, I do utterly renounce and forsake
 “ all foreign jurisdictions, powers, superiorities, and authorities, and
 “ do promise that, from henceforth, I shall bear faith and true al-
 “ legiance to the Queen’s highness, her heirs and lawful successors,
 “ and, to my power, shall assist and defend all jurisdictions, privileges,
 “ preheminences, and authorities granted or belonging to the Queen’s
 “ highness, her heirs and successors, or united and annexed to the im-
 “ perial crown of this realm. So help me God, &c.”

By the Queen’s being the only supreme governor of this realm, as well in all spiritual or ecclesiastical things or causes as well as temporal, might very fairly be meant only such a directive, coercive, political power in all ecclesiastical causes, as has been before asserted. And if the prelates of that time had rightly considered it, with all the other declarations that had been made upon this subject, they might have easily seen, that no more was intended than this.

INDEED, there was reason to believe they were satisfied that no more was intended, because many of them had taken an oath of the like nature, full as strong as this, in the time of king Henry the Eighth, required by 25 Henry VIII. chap. i. by which they renounced all the pope’s jurisdiction here, and swore to acknowledge the king as supreme head on earth of the church of England; and to maintain and defend all the acts or statutes made, or to be made, in confirmation and corroboration of his majesty’s power and supremacy on earth of the church of England; so that they could not well have any real scruples now about this oath to queen Elizabeth.

BUT whether they had any such scruple or not, as they had no real cause for refusing the oath, which was designed for a just security to the government, they might, with reason, be supposed to be persons disaffected to it, and might, therefore, be justly deprived of the ecclesiastical benefits and dignities they possessed.

BUT the Romanists object farther, that this deprivation of the bishops, in the first year of queen Elizabeth, was unjust in another re-

spect, viz. because it was effected by the lay-power only, which has no right to eject bishops out of their sees. As they are consecrated to them by a spiritual authority derived from Christ, nothing less than the like authority can take away the right which they have to them, or dissolve the spiritual obligations, which the people committed to their charge are under to obey them. The act of the temporal legislature, therefore, by which only they were deprived of their bishopricks, was a sacrilegious violation of the rights of the church; and consequently their successors were schismatical and unjust intruders into those sees; and, consequently, the succession of our present bishops, derived from them, is unjust, irregular, and schismatical.

IN answer to this objection, we affirm, that, whenever any bishops are really disaffected to the civil state, or otherwise notoriously unworthy of their sacred charge, and their fellow-bishops will not censure and deprive them, they may then be justly and effectually censured or deprived of their sees by the civil power alone.

THIS authority to censure and deprive the bishops and clergy, when there is just occasion for it, belongs to the civil sovereigns of every state, on account of their being trustees and guardians of the public welfare, to the maintenance of which this authority is necessary. For, if the civil sovereign had it not, the clergy might, in some cases, be not only corrupt and heretical to a great degree themselves, and so the people might be infected by their example and instruction, but they might have so great an influence upon the people, as might affect or endanger the subversion of the civil government. They might raise or foment such notions or prejudices among them, as might, either directly or indirectly, make them disaffected to the government, and as disposed as they might be able to raise successful seditions and rebellions against it. If you think this not to be practicable, do but consider what has been actually done in divers instances.

FIRST, the authority of the Greck emperors in Rome, and a great part of Italy, was in a very short time almost wholly subverted by the artful management of the bishops and clergy of Rome, and their influence upon the people, in the dispute concerning image worship. The emperor Leo Isaurus having thought fit to interpose to prevent the worship of images, which was grown excessive and highly scandalous

to the Christian religion, the people of Italy, who were much inclined to that worship, were so artfully applied to by the pope of Rome, and their zeal for the images, and against the profaneness of the emperor, as it was represented, was so much inflamed, that they very soon raised a sedition against his authority, pulled down his images, denied his tributes, and, in a little time, by the help of the Franks, intirely threw off all subjection to him.

How far the superstition of the people, and their attachment to the clergy may go, and consequently how able the clergy may be to distress the civil government, we have another remarkable instance in the case of Robert king of France, the son of Hugh Capet. This prince was of a good moral character; he, by the advice of an assembly of the bishops of France, espoused Bertha; who being *sa parente au quatrième degré*, the canon law did not allow him to marry her without a dispensation from the pope. Pope Gregory the Fifth being incensed, because he made no application to him for that purpose, threatened to excommunicate the king and Bertha, if he did not separate from her, and actually put the whole kingdom of France under an interdict, A. D. 1003. “A quoy les peuples defererent si humblement (says Mézeray Abr. vol. i. p. 313. See also Droit Eccl. Franc. tom. i. p. 219.) que tous les domestiques du Roy, à la reserve de deux ou trois, l’abandonnerent, et on jettoit aux chiens tout ce qu’on desservoit de devant lui, personne ne voulant manger de viandes qu’il avoit touchées. Ces rigeurs le contraignerent de se separer d’avec elle. Mais ce ne fut que deux ou trois ans après. Et on trouve qu’ils firent le voyage de Rome, soit pour y defendre leur cause devant le pape, soit pour luy demander pardon. Tant y a que le mariage demeura nul.” It is evident, that, if there had been other fit circumstances, the superstition of the people might have been easily wrought upon to dethrone this prince.

In Germany, about the year 1076, the emperor Henry IV. was excommunicated by pope Gregory VII. upon the quarrel between them, concerning the right of giving investitures to bishops. “Pontifex Augustum diris devovit, populum sacramenti et obsequii vinculo solvit. Ejusmodi fulminis pontificii eâ tempestate tanta vis fuit, ut et apud plerosque omnes (says Puffendorf, Introd. hist of Europe, p.

“ 423.) Imperatoria majestas evilesceat, et ipse Augustus in summas
 “ calamitates et ærumnas conjiceretur. Indicto A. D. 1076, omnium
 “ pene principum conventu Treberæ, imperium Henrico abrogatur.
 “ Sententia tamen postea mitigata est, ut ad arbitrium pontificis tota
 “ causa referatur. Inter hæc Henricus paucis comitibus, adultâ jam
 “ hieme, in Italiam profectus, Canusii ad portam sub dio, vulgari et
 “ laneo habitu nudisque pedibus per triduum substitit, veniam supplex
 “ a pontifice petens.” And even after this base submission, the pope
 did not cease to excite so great troubles and rebellions against him,
 that in the end this unhappy prince lost his life. In like manner his
 successor Henry V. was so distressed by the pope about the affair of In-
 vestitures, that he was forced to give them up A. D. 1122. “ Quo
 “ facto et imperatoria majestas vehementer est imminuta, et pontificia
 “ auctoritas et potentia mirifice aucta.” Puffend. introd. p. 423—425.

IN England king Edwy about A. D. 958. having incurred the ill
 will of the monks, who were then very popular in this nation, with
 Dunstan, then abbot of Glastenbury, and afterwards archbishop of
 Canterbury, at their head; the monks “ firent tous les efforts possi-
 “ bles pour decrier le conduite du jeune roy. Par les calomnies de
 “ tous totez qu’ils semerent contre lui, ils reussirent enfin à le faire
 “ passer dans l’esprit de leurs devots pour le plus impie des hommes.
 “ Ces calomnies repandus avec soin firent un si prompt effet, qu’on
 “ vit bientôt paroître dans la Mercie un grand nombre des mecon-
 “ tents, dont Edgar frere du roy se declara le chef et protecteur, &c.”
 Rapin, tom. i. The consequence was, that Edwy was outed of a
 great part of his dominions.

AFTER the Conquest, king Stephen was in great danger of the like
 fate. As he gained the kingdom, by the influence of the pope and
 clergy, to the exclusion of the empress Maud, who had the true right;
 so when he had once disoblighed them in taking away their castles, he
 found how great and dangerous their influence was against him. In
 a synod they formally declared him to be deposed, and, if the empress
 Maud had managed politicly, that king could never have kept the
 throne.

THESE instances, to which many others might be added, shew
 plainly, that, at some times, religion or superstition may have so much
 power

power upon the minds of mankind, that the clergy, who can work upon them thereby, may, if suffered to keep their influence, and the power which their sacred character and revenues give them, be very dangerous to the civil government. They may, in many cases, even prevail against it.

AND this is true, not only of the clergy of the Romish communion with the pope at their head, but it may likewise be true in many cases of the Protestant clergy. You must see this, if you consider what happened in Scotland in king James the First's time, before he came to the crown of England [s], and the influence which even of late Dr. Sacheverel had on the people of England, and if at the same time you attend to the scheme of ecclesiastical authority independent of the civil state, which some of them contend for, and in several cases have actually usurped, viz.

THAT the bishops only should elect, as well as ordain, all bishops and clergy, and alone have authority to judge and censure them in all matters, either of faith or practice, unless in capital crimes, and other great ones of a secular nature:

THAT the bishops should have the sole administration and disposal of all church revenues, not indeed to alienate them, but to distribute them as they think fit, and not to let them be alienated by the civil government:

THAT they should have an entire liberty to preach, and cause their clergy to preach what doctrine they please to the people:

THAT they should have a right to censure all the laity, even by the excluding from communion, as long as they please, the members of parliament, peers, the royal family, and the king himself:

THAT they should have a right to hear secret confessions of all their sins, and to give them absolution:

THAT they should have a liberty to meet together in convocation as often as they think fit, and treat upon ecclesiastical matters, censure opinions, and the like:

THESE independent powers, in the hands of cunning and ambitious men, and in times when the people are inclined to superstition, might

[s] See Spotiswood's Church History of Scotland, and Heylin's Hist. of the Presbyterians.

they not easily make the clergy, Protestant as well as others, too hard for a civil government?

LESLEY indeed (Regale and Pontificate) proposes, that they should be under the obligation of oaths, not to use their influence against the civil government: that the principle of passive obedience to it should be propagated among them: and that the civil governors, though they should not have authority to deprive the bishops, yet should be at liberty to imprison, or put them to death, if they were found to act or design treason or sedition against the government. But first, how weak a security would oaths or principles be, when the clergy might be ill designing and ambitious? How little would it signify, that the civil government might imprison them, or to put them to death? They might have good reason to be assured of their disaffection and seditious practices, and yet might not have evidence sufficient to convict them. If you say that they ought not to be deprived without sufficient evidence, and that where that is, they may be imprisoned or put to death, which will hinder their influence more effectually than depriving them; I answer, that may be true in some cases: but, in the mean time, the nation and the civil government may, and must, suffer for want of bishops to exercise their functions; which, if these criminal ones be deprived instead of imprisoned, may be done by other fit persons appointed to succeed them in those posts for the public service.

UPON the whole, an authority to deprive the bishops and clergy, who are found to use their influence against the civil government, is the best, it is the only effectual security which that government can have in general, and in all cases that may happen. Now our Saviour certainly designed, that civil governments, which are necessary to the welfare of mankind, should be secured in all cases: and therefore he could not design that his clergy should be so far independant of it, as the powers above specified would make them. He must allow, that the civil governors must have a right to limit and controul the exercise of the clergy's spiritual jurisdiction, when it may be otherwise exercised, so as it may do harm to the state. He must have vested the civil governors with a right not only to judge of the conduct and design of the bishops and clergy, but even to deprive them of their secular emoluments,

luments, and to restrain the exercise of their sacred functions, when it is found that the civil government will really be endangered or suffer much by their continuing to exercise them. And their having a right to remove, or deprive, the bishops and clergy, when they are really disloyal and dangerous to the state, infers, that they must have a right to take cognizance and judge of their doctrine and conduct in all cases [k]. For if they had not this right to judge in all cases, then, in some of the excepted cases, the welfare of the civil society might be endangered, which is not to be admitted.

HOWEVER, it does not follow from their right of judging, that they must have a right to act against the clergy in all cases; for the civil government may judge wrong, and, whenever they do so, they cannot have any right to act in pursuance of such judgments; if they do so, they will be called to a severe account by God for such a misuse of their power. And therefore they ought to be very cautious both how they act and how they judge. In all doubtful cases in Christian countries, the civil governors ought to pay a due regard to the advice, and, I will even say, to the authority of the clergy; for the clergy have some real authority in spiritual matters, which, as I have above observed, ought not to be lightly or disrespectfully opposed. But as the civil governors have a right to judge for themselves in all cases, so when they judge truly that the influence of the bishops and clergy is, or will be, used to the hurt of the civil government, they then have a right to oppose and restrain that influence by proper means, and in a sufficient degree.

To this it may be objected, that, as the civil governors will probably oftener err in their judgment than the clergy will, and so truth will be oftener hindered than promoted thereby, we therefore conceive

[k] The necessity of providing for the safety of the civil government infers, that all princes have a right to deprive bishops and clergymen, who are found to be seditious, and disaffected to the civil state, and in a condition to hurt it. But Christian princes, who have established this religion, have a farther right, in virtue of this establishment, to censure and deprive bishops only for erroneous doctrine; even though these principles, or conduct, should not be hurtful to the civil state. For as they protect and maintain the bishops, &c. to teach their people true doctrine, so they have, in themselves, a right to judge which is true doctrine; and if the bishops, &c. will not teach that doctrine, then to deprive them of the benefits of the establishment.

that Christ cannot have vested the civil governors with this right of judging and censuring the clergy.

BUT to this I answer, that, even admitting this supposition, which is giving the utmost advantage to the objection, yet still it is justly presumable, that Christ hath vested the civil magistrates with this right; because their opposition to the truth cannot essentially hurt it. It may both subsist in all cases, and even thrive under discouragements from them; whereas, on the other hand, if civil governors had not this right of judging and censuring their government, it could not subsist in some cases. But it is necessary that this should subsist and be secured in all cases: *Ergo*, the civil magistrate hath this right, &c.

Now, upon these grounds, we may fully vindicate the deprivation of the bishops made in the first year of queen Elizabeth, and other proceedings in the Reformation, from whence our settlement ecclesiastical at this day is derived. That princess, at her accession to the throne, found the doctrines, forms of worship, &c. then publicly established, to be very erroneous and superstitious. Almost all the bishops who then were in the several sees, not only professed and practised according to these forms, but they resolved to adhere to them, and refused to take that oath acknowledging the Queen's supremacy, which, I have shewn, was just in itself, and therefore might justly be required of them. They had plainly an aversion to the Queen, on account of her being of a different religion; and, for that reason, they refused to crown her. A majority of them being of this opinion, they would not, therefore, in an ecclesiastical way have deprived, or acted at all against any of their own number: and if, with these dispositions, they had continued possessed of their sees, they must have been able to do a great deal of mischief to the civil government, both in keeping up error and superstition among the people, and in raising a disaffection in them towards the civil government, which might have proved very dangerous to its welfare. Therefore, the legislature had a full right to deprive them of their sees. We do not say that the civil government had a right to deprive them of their episcopal character; as they received that from a spiritual authority; and, during their lives, no civil power could take it away and the less, because it was not necessary to the safety of the civil government that they

they should do so. But of the power and right of exercising their episcopal authority in such a diocese, with temporal effects, and of all the secular emoluments, revenues, and dignities thereto belonging, the civil governors, for the sake of the public welfare, had a full right to deprive them.

UPON the voidance of their sees, the deans and chapters belonging to each of them, having a license from the Queen to choose new bishops for their respective churches, chose certain persons by her appointed in letters missive for that purpose. It is true, they were not at liberty to do otherwise; because, if they had not complied with the royal nomination, they would have incurred a perpetual imprisonment, the forfeiture of their goods, &c. i. e. the penalties of a *premunire*. But their being under some constraint in this case was of no real disservice to the church; for, as long as the persons nominated by the Queen were, in all respects, fit for that sacred trust, and she had a right to nominate, it could be no harm that they were obliged to choose persons, who, by being approved by the Queen, might be the more able to serve the church and religion.

IT had, indeed, been the usual practice in this nation, so long ago as the Saxon times, for the kings or their curia's to nominate to bishopricks, without any such form as election by the deans and chapters [1]. Collier, indeed, in his preface to his Ecclesiastical History, vol. i. p. v. affirms the contrary; and ibid. vol. i. p. 114, says, that Withred, king of Kent, in a council at Becanceld, A. D. 694. declares, "that the kings had no right to the appointment of bishops, but that it was to be made by their fellow bishops." But the authority of this council, though allowed by Dr. Atterbury, Rights of Convoc. and by bishop Stillingfleet's Eccles. Cases, vol. ii. p. 89, is opposed by Dr. Wake, in his State of the Church, p. 140; and is not indeed very clear, so that there cannot be much stress laid upon it. But as to the matter of fact, Ingulphus's testimony is unquestionable. And our common lawyers generally agree (see Gibson's Codex, p.

[1] See Stillingfleet's Ecclesiastical Cases, vol. ii. p. 91. Ingulphus, History, fol. 509. b. says, speaking of the times before the Roman conquest, that, "a multis retro annis nulla erat electio praelatorum. mere libera et canonica; sed omnes dignitates, tam episcoporum quam abbatum, regis curia pro sua complacentia conferebat."

122.) that bishopricks in England [m], being at first all of the king's foundation, were donative; as they were likewise in France [n], Spain, and Germany, in those ages, which continued without any considerable opposition, till the see of Rome having formed the project of its own excessive aggrandisement, by bringing all the clergy in Christendom to a more close dependance upon it, pope Gregory VII. first opposed this practice with vigour; and his successors, after many struggles, at length, in great measure, carried their point in this, as well as in other kingdoms in Europe. Henry the First yielded up the point of Investitures (see Spelman, in Wilkins's Laws, Life of Henry I. p. 299. 304.) which grant was more solemnly confirmed by king John in the great charter. Then, for a while, elections were made by the deans and chapters, which was the method the church of Rome insisted upon, without any express or peremptory nomination from the crown; but this method did not continue long. Our kings found it so expedient to the welfare of their civil government, that they should have some influence in the elections of bishops, that they seldom suffered any one to be chosen contrary to their liking; or, if any dean and chapter presumed to choose contrary to their liking, they frequently punished them for so doing. (See Prynne, on the fourth Instit. p. 321.) Afterwards, the king got the nomination, and the pope the approbation. (See Burnet's Hist. of Reformation, vol. i. p. 11.)

I AM sensible, indeed, that some persons, and those Protestants, are of opinion, that the practice of our kings and other monarchs in this case is far from any proof of right. It ought to be considered as an invasion upon the liberties of the church, which, in the primitive ages, vested the right of choosing bishops in the other comprovincial bishops, by a canon of the first council of Nice.

THE objectors ought to shew, that there was either a divine unalterable appointment for this method, or that such a one is, in the nature of things, essential to the welfare of the church. But no divine or apostolical appointment, or at least none that was intended to be

[m] See Selden, Not. ad Eadmer. p. 1608—1610, worth reading. Twissden, Hist. Vindic. of the Church of England, p. 52—64. ibid. 109. Coke upon Littleton, § 201, &c.

[n] De Marca, part. ii. p. 296, 297. Vertot, Nominat. aux Evêchés de France.

unalterable, can be shewn to have been made with regard to this matter. On the contrary, it appears, that the bishops were anciently chosen by the presbyters and people, as well as by the bishops of the province. Nor can this method of election by the comprovincial bishops, which the objectors would have take place, be essential, or constantly necessary, in the nature of things, to the welfare of the church. For it is plain, that the church hath long subsisted, and been in a flourishing condition, and been provided with very good bishops, upon the appointment of princes. Indeed, there is visibly a great expediency for this being done, in order to maintain that good correspondence between the civil government and the church, which is greatly subservient to the welfare of both.

AND this being the case, it signifies nothing to allege a canon of the council of Nice (Can. 4.) Collier's Eccl. Hist. preface, vol. i. p. xiv. prescribing this method of election by comprovincial bishops. For that council had not, nor could any council have, as I observed before, a right to determine any such matter, in which the welfare of several foreign kingdoms might be concerned, so as to exclude all changes that might be found necessary to be made for the safety or advantage of those kingdoms.

AND, indeed, the church of Rome has, in effect, acknowledged, that the method of election then settled was not unalterable; for she has actually changed this method herself, and established that of election by the several deans and chapters pursuant to the nomination of princes, which is to be ratified by the pope, as we have seen above.

TRACT VII.

The Claim of some English Protestants to greater Liberty than they now enjoy.

AFTER having used my endeavours to justify our spiritual liberty from the objections of the Romanists against it, I should have put an end to the first part of these papers, but the particular state of our nation, and my earnest desire that you should be able to judge rightly of it, oblige me to add some further considerations. You are sensible, that numbers of our countrymen, who, I believe, are not wanting in affection to the civil part of the present establishment, profess to be dissatisfied with the measure of liberty, religious and civil, they now enjoy under it, and think themselves entitled to considerably more from reasons of justice and of religion, as well as from considerations of national advantage; and, accordingly, some persons amongst them have, in several late books, been free in their complaints against those who have not given way to the applications the dissenters have made for that increase of liberty to which they pretend; nor can we deny, but some things have been urged in defence of their cause which deserve to be considered, not (as they have been hitherto) with the warmth and vehemence with which religious or civil disputes are generally attended, but with the freedom and sedateness of enquiry which are requisite in order to the discovery of truth.

IN this state of things, I cannot but think it desirable and necessary, that you, who are likely so soon to have a seat in the legislature, should be duly apprised whether their claims be well grounded or not, that (in a point which is certainly of great moment to the constitution of our country, and not a little difficult in itself) you may take the side which you find to be right; to which end, I shall lay before you, with candor and benevolence, and, according to the best of my judgment, with truth, the things of the most weight that have been alleged on each side of the question; and I do this the rather, because I shall endeavour to leave the common track of the controversy, and put it in
some

some measure on a new foot, by which it will be much shortened, and, I hope, rendered much more clear and easy to you.

BUT before we consider what grounds those Protestants, who separate from the church of England, have for their complaints, it may be proper to acquaint you with the particulars of that spiritual liberty which they actually do or may enjoy as our laws stand at present.

By the first of William and Mary, supposing they perform the conditions of that act [o], they are excepted from all penalties laid upon them by several preceding acts of parliament. And by 5 George I. chap. iv. the acts against occasional conformity and schism were repealed. So that now they may,

FIRST, hold assemblies for divine worship, after their own way, at whatever times and places they think fit, after the place of their meeting shall have been certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justice of the peace at the general quarter sessions, &c. and keep their doors open, without any fear of being disquieted or disturbed. They are not obliged to celebrate any of the days which our church keeps holy, except only the Lord's-day.

SECONDLY, every particular congregation amongst them may choose its own pastors, without being obliged to apply to any other person to approve or lay hands upon them. And, as the general practice now is, those ministers are under no public restraint but what the congregation lays upon them, as to what they shall teach. For though, indeed, by the Toleration Act, they are obliged to subscribe the Thirty-nine articles, excepting the 34th, 35th, 36th, and part of the 20th, in order to their being qualified for preaching, yet they are very seldom called upon to make, or do actually make, this subscription; in which forbearance, indeed, I am humbly of opinion, that our bishops and other governors act rightly and agreeably to the genuine principles of toleration; from a sense of which it is very probable that the dissenting ministers will continue to have this liberty. In these two respects the dissenters have more liberty than the members of the church of England.

[o] The Toleration Act.

THIRDLY,

THIRDLY, as the schism act has been repealed, they may have schools and academies taught by persons of their own persuasion, for the education of their children in it according to their own principles; and they have actually at present considerable numbers of such schools and academies.

FOURTHLY, they may hold assemblies, when they think fit, not only for the public worship of God, but also to consult about their religious and civil interests, and have actually done so on several occasions (which is more than the clergy of the church of England, in their public capacity, are allowed to do, without a writ of summons from the crown). They did so in their attempts some years ago to get the Test Act repealed.

FIFTHLY, they may excommunicate or exercise any other acts of discipline against any of their members, and even over their ministers, without any appeal possible to be made against them to the crown, or any other jurisdiction, which likewise is more than the church of England can do.

SIXTHLY, they may safely write and publish whatever books they please, in a proper argumentative way, in defence of their own religion, or in opposition to the established church; which they have freely done, and sometimes even in an invective way. And,

SEVENTHLY, they may hold any civil office, if, at their entrance upon it, they only once take the oaths required, and the communion in the established church.

FROM this account it is visible, that our dissenting brethren have all the liberty that can be necessary in a religious view, in order to their salvation. The chief questions to be considered, in regard to our safety, as well as theirs, are,

FIRST, whether the schism, that now unhappily subsists between the dissenters and the church of England, be justly chargeable on the former or on the latter?

SECONDLY, whether any alterations in our liturgy be necessary to be made, in order to gain the dissenters? And,

THIRDLY, whether the dispositions, occasioned by that schism in some of the dissenters, with regard to the establishment of the church of England, be, or be not, a sufficient reason for excluding the persons

sons so disposed from a capacity of offices of trust and profit in the civil state?

WITH regard to the first of these questions, every one must be sensible how very great a stress the gospel of Christ lays on charity and religious unity between his disciples. For there is nothing more clear, or more strongly urged, or more frequently repeated in the New Testament, than the union, charity, and affection that ought constantly to be preserved amongst Christians. This unity and affection our Lord made a principal and essential mark of being his disciples; and in order to keep it up constantly amongst them, he commanded them to meet together for his worship and service, and therein to make frequent commemoration of his death in the eucharist, which represents them as all members of one spiritual body, which is Christ, and therefore members one of another.

Now after this to divide, and (which is generally and naturally the consequence) meet in separate places for religious worship, in profest opposition to each other: this opposition and separation cannot, in the ordinary course of things, be made without producing contention, animosity, and ill will to each other; and must, certainly, both in its own nature, and as a breach of Christ's command, be a grievous sin in those who are justly blameable on account of this discord and consequent separation. As to the fact of the separation of the dissenters from the church of England, it is well known to have been made on their part; but in their own defence they allege, that they were obliged in conscience to make it.

Now there may, indeed, in some cases be a necessity for making such a one; viz. where any church or body of Christians will not admit others to communicate with them, unless they do somewhat that is really unlawful. In that case the obligation to hold religious communion ceases; for we are not to do evil that good may come. We ought in such a case to abstain from the communion of such a corrupt and imposing church; and this I have shewn to be the case between us of the church of England and the church of Rome. But is this the case between the Protestant dissenters and the church of England? Does this church impose any necessary terms of her communion which are really and in themselves unlawful? Perhaps you

will see the contrary, if you will trouble yourself to peruse, with attention, even the following short observations on the dispute between us. I have not here meddled with their objections against ministerial conformity; because no dissenter can be obliged, either in law or conscience, to be a minister in our church. If then they do not like the terms of ministering in it, they are not compelled to it: they may communicate with it, as laymen; and in so doing, they will not be obliged to any thing that can, with any colour, be reckoned sinful. I have, therefore, only considered their objections to lay-conformity.

Now to vindicate themselves in abstaining even from lay-conformity, some of them have vehemently objected to particular practices required in our church, as being sinful; viz. to the use of sponsors, and of the cross, and the thanksgiving for the supposed regeneration of all persons, in baptism; to the manner of confirmation; to the improper translation of the psalms; to the reading apocryphal lessons in the service of the church, and the Athanasian creed; to some passages in the burial service; and to the obligation of kneeling at the sacrament of the eucharist.

BUT must not any one, who considers the nature and design of these things, see there is no ground for this heavy charge? Is there any immorality in providing some other persons, besides parents, to take care of the pious education of infants? This is all our church means to do; and this must ordinarily or often have good effects.

THE use of the cross in baptism is professedly designed for no other purpose, but to signify to the by-standers, by a visible sign and token, as well as by words, that the baptised child, as all other members of the church, is to embrace the service of Christ, notwithstanding all temporal hardships. And can there be any hurt in this? Kneeling in the Lord's supper is declared to be practised, not from any intention of adoring the sacramental bread and wine then bodily received, or any corporal presence of Christ's natural flesh and blood, but only to signify our humble sense of, and gratitude for, the immense benefits we have received by our Saviour's death on our behalf. Though while he was on earth he condescended to let his apostles sit or lie in a more familiar posture with him at his table, yet now that he is exalted to his glory in heaven a more humble posture is properer for those

those whose hearts are duly affected. The like remarks may be made about the use of the surplice, of a set liturgy, and several other things blamed by the dissenters.

THESE things are so clear, that the late Dr. Calamy, who was generally allowed to be one of the ablest men amongst the dissenters of his time (though, indeed, he charges the practices above-mentioned as sinful) yet in other places he expressly owns, that the things added by our church in divine service (meaning the things above-mentioned) are not in themselves sinful to be complied with [p]; his meaning was, that they only become so in those by whom they are unwarrantably imposed [q].

Now this is putting the matter on quite a different foot, and goes upon a principle, which, indeed, the dissenters have always much insisted upon. This principle is, that “nothing is lawful to be practised in the worship of God, besides the necessary circumstances of it, unless it has been appointed by God himself in the holy Scripture. He only knows what will be acceptable to him; and for men to add any other practices in his worship, more than what he himself has ordained, is that will-worship which is condemned in several places of the Scripture.”

Now with regard to this principle, we freely own, that “nothing can be lawfully practised in the worship of God, as being in itself necessary to please and propitiate him, or to be a certain effectual mean of conveying his grace to us, but what he himself has plainly commanded; for men to add things to his worship, with this view and presumption, would be, indeed, *will-worship* [r], of which the Colossians of old were, and the Romanists of late are, guilty.” But nothing of this kind can be justly charged on the few ceremonial practices in the church of England. We do not practise them as being necessary to please or propitiate God, or as certainly effectual to convey his grace to us; we only look upon them as generally useful to make good impressions upon us, and dispose us the more to perform our duty

[p] See Doctor Calamy's Life of Baxter, p. 560, &c.

[q] Defence of moderate Non-conformity, p. 81, 82.

[r] COL. ii. 23.

as he has commanded it [s]. And this being only acting in pursuance of his commands, cannot ever be unlawful when the ceremonies have, or are likely to have, this good effect; as, in the burial office, the ceremony of ashes to ashes, dust to dust. The use of dust and ashes was allowed by Calvin, as rending of clothes, striking the breast, and sacred music (our Saviour and the apostles *sung an hymn* [t]; *if any be merry, let him sing psalms* [u]); womens praying with their heads covered, men with their heads uncovered [w]. Circumstances of one kind or another external worship must always have been; and some there may be, though not always necessary, yet in several cases useful to promote greatly the good ends of this worship.

Now the same reasons that make it fit that the worship itself should be practised, must be of force to render those circumstances lawful and expedient to be added. However, it was not proper that these, or any other such circumstances, should be enjoined in the holy Scripture for perpetual use, because those usages which in one age and country may be very conducive to promote piety, in another may tend to have a very different effect; and, therefore, our Lord and his apostles did not think fit to enjoin in the Scripture any circumstances in his worship as what were to be unchangeable: he left things of this kind to be ordained to edification by the several governors of his church in all ages: and in giving to them authority to act in these points as should be fit; he also laid all private Christians under an obligation of obeying such injunctions that should really serve to promote true piety and edification. This was the import of those apostolical directions to *let all things be done decently, and in order; let all things be done to edifying* [x], &c. It is plainly to be supposed, that all things relating to religious worship were not settled in the Scripture: and if the governors of the church act agreeably to these general directions in any additional ceremonies which they enjoin to be practised

[s] The whole synagogue service was not of divine but human institution. See Potter's Church government, p. 308. Where see other things of this kind. See also Socrates's Eccl. Hist. lib. xi. c. 22.

Baptism was added by the Jews as such a significant ceremony, previous to circumcision, without any divine authority; yet our Saviour himself submitted to it, and reckoned it a part of righteousness so to do, Matt. iii. 15. He did so to the feast of the dedication of the temple.

[t] MATT. xxvi. 30.

[u] JAMES v. 13.

[w] 1 COR. xi. 4, 5.

[x] 1 COR. xiv.

(provided they be not in too great numbers, so as to be inconvenient in divine worship) these injunctions of theirs are certainly lawful, and ought to be obeyed by all private Christians.

SOME persons have entertained a notion, that whatever is neither commanded nor forbidden in the holy Scripture, as to the worship of God, is a part of Christian liberty, upon which the governors of church or state ought not to intrench by their commands or prohibitions [y]. And that if at any time they do so in any instances, though in themselves lawful to be obeyed, yet private Christians ought not to obey them, for fear of giving countenance to this usurped authority, and encouraging, by their submission to these commands, the imposition of many more of the like nature, that may prove of disservice to religion, as well as burthensome to them. But this notion of the extent of Christian liberty in these points is very wrong; for God, in order to the preservation and promoting a right practice of religion, intended, as I have said, that, besides the practices which he ordains in Scripture, all other fit means or helps towards them should be ordained, from time to time, by the governors of his church [z]. And therefore, when such are ordained, it is no part of Christian liberty to refuse to submit to them. God requires such submission and obedience as a reasonable and necessary condition of Christian communion; and disobedience is a blameable and perverse breach of unity and order in the church, which God will not fail to punish.

BUT, perhaps, you may think, as others have done, that even admitting church governors have sufficient authority to enjoin ceremonial practices that are fit to be enjoined, and private Christians ought to submit to them; yet where the advantage of continuing them is not very great, and where numbers of Christians are, though unduly, yet so far actually offended at them as that, without hurting their consciences, they cannot comply with them, it cannot but be right, and the duty of governors in such cases, to lay aside these ceremonial practices, or leave them indifferent: for does not Christian charity,

[y] See, about not offending Christians by unnecessary impositions, Locke's Letter on Toleration and Dr. Clarke's Sermons, vol. ii. p. 38.

[z] See Mason's Sermon, p. 10. on this point of liberty.

and a regard to the weakness of our brethren, require this conduct? Are there not several precepts and instances in the Scripture to that purpose? viz. in the fourteenth chapter to the Romans, ver. 1, 2, 3, &c. [a]: and accordingly, ought not the ceremonial practices, which are contested and charged as sinful by the dissenters, to be laid aside, in order to open a way for their coming into our communion? Might not the use of the cross in baptism, and the use of sponsors, might not kneeling in the communion, be left indifferent? Might not the apocryphal lessons be laid aside, and some passages in the liturgy and burial office be altered, &c.? These things have been several times proposed, even by eminent persons in the communion of the church of England; and, therefore, cannot be supposed likely to hurt our church, whilst they might gratify and gain even many amongst the dissenters. Must not Christian charity and condescension to our brethren, even supposing them weak and in the wrong, require that we should lay aside these things? To this I answer, that we ought, undoubtedly, to take any measures conducive to conciliate the good will of our dissenting brethren, and to bring them over into our church; provided,

FIRST, that these measures will be likely to gain over any considerable numbers of them, without being offensive to others, for whom we ought to have equal, if not greater, concern; and that withall they will be, in no respect, detrimental to the welfare of our public establishment in church and state. All these circumstances are of importance, and ought to be considered and examined with care, before any thing can be rightly determined of this kind: and the first enquiry proper to be made is, whether these concessions would be sufficient and effectual to satisfy any considerable number of our dissenting brethren, so far as to bring them over to our communion; for unless they will be likely to do this it will not be worth while to make so great an alteration.

Now the right way to judge about this question must be, to recollect what the avowed demands and the conduct of the dissenters have generally been ever since their separation was formed, about the

[a] See what bishop Taylor says, *Liberty of Prophecyng*, p. 353, 354. about the duty of particular churches in allowing communion.

middle of queen Elizabeth's reign, and as they continued, and are at present [b].

Now though, at first, they insisted chiefly on some alterations in the ministering habits and the public liturgy, yet they soon afterwards carried their demands to a much higher pitch: they charged the whole frame of the episcopal hierarchy, as being corrupted and unlawful to be continued. Bourn, p. 31. says, "It is a tremendous insult on the authority of the Son of God, our lord and judge, so directly to counteract his orders, by subjecting some ministers to the will of others;" he means by the oath of canonical obedience, p. 34. 40. Mr. Pierce's Vindication, p. 119. says, "that the puritans looked upon maintaining such a corrupt church government to be a grievous sin, and highly offensive to God; and insisted on its being abolished [c]." They contested several parts of the royal supremacy [d]; especially the nomination of bishops and pastors. These last they declared belonged of right indefeasible [e] to the choice of the several congregations to whom they were to minister [f]: they were for restoring abbey lands [g]: they refused to use the established liturgy, and insisted that they ought to have the liberty of free extempore praying in public, as they should see occasion. And have not these same notions and demands been ever since insisted upon by the generality, at least by great numbers, of the dissenters? Are they not so to this

[b] The Puritans in queen Elizabeth's time, after speaking of the offices of lord bishop, suffragan, dean, archdeacons, says, "all which offices, as they are strange and unheard of in Christ's church, nay plainly in God's word forbidden; so are they utterly, with all speed, out of the same to be removed." Bishop Maddox's Vindication, p. 112.

The Puritans would not tolerate others, *ibid.* p. 120, 121, 122. 124. The Independents in the Savoy conference, 1661, do not allow that ordination to the work of ministry, though it be by persons rightly ordained, does convey any office-power without a previous election of the church. Neal's Purit. vol. iv. p. 191.

"But is not the Christian world in a sad condition if a bishop cannot be chosen without a royal mandate?" &c. Neal's Purit. vol. iv. p. 37. See what he says on the absurdity of uninterrupted succession.

The author of the Foundations of Religious Liberty, in 1755, p. 24, 25. seems to declare against all civil establishments in religion, and, particularly, the establishment of the church of England, p. 29.

[c] Calamy's Life of Baxter, p. 548. "The people were not to be won to the love of prelacy." The dissenters, says Calamy, Life of Baxter, p. 163, 164. charge eight things as flatly sinful in the English liturgy.

[d] See Maddox, p. 220. 223, 324. and The late Dissent fully justified.

[e] Bourn, p. 86.

[f] See Maddox's Vindic. p. 218, &c.

[g] Maddox, p. 233—242.

day [h]? And can it, therefore, be probable that they will be satisfied so as to come over to our church, unless they be gratified as to these points? Of this every intelligent person, who knows the world, must judge for himself. In particular, how little disposed they would be to bear episcopacy, such as it is here, we may see by the vehement opposition they make to a lower state of it in the American colonies, and their connexions with the Presbyterians in Scotland.

THE next question then is, whether these great points, as well as the smaller before mentioned, ought to be given up, in order to bring over the dissenters? Perhaps some persons in this age may think that the liturgy, episcopal government, the royal supremacy, &c. might well enough be parted with for the sake of peace. But they who know the dispositions of the generality of the nation will not imagine, that this will be the common way of thinking; it would probably be entertained by very few: to be sure it would not be the judgment of those, who for their numbers, learning, and even for quality are very considerable, and regard episcopal government as of apostolical institution, and intended, by the inspired authors of it, to be, as far as conveniently might be, perpetual in the church. It is probable, they would sooner make a schism of greater numbers than the present, and more dangerous to the state, than comply with such measures; and even the more moderate kind of churchmen would be against these concessions, as being first likely to occasion incurable disturbances in our church, and the rise of innumerable sects, and also to give very great advantages to popery against us, when we should be an unconnected, disunited heap of various little societies, in opposition to her so well united, and of so much, and so increasing, power in Europe. And, even on a civil account, these moderate men would be against these large concessions, because they know such concessions would too much weaken the crown, by ruining its supremacy in ecclesiasticals (which is of exceedingly great moment towards supporting the royal authority) and hurt the nobility and gentry by taking away their patronage, and they would at the same time increase and heighten a

[h] See Bourn, both his pieces, and the dissenting gentleman's Answer to Mr. White.

democratical spirit [i]; all which would tend to raise a disaffection among the generality of the people, that would be highly dangerous to the establishment in the present family. In short, these concessions would tend to destroy by degrees the whole ballance of the constitution; and, therefore, we must conclude, that no real friend of it would be for them.

Now, if these great concessions, which are the only ones that will be likely to satisfy and bring over any numbers of the dissenters, are not to be made; the remaining question is, whether any lesser ones are proper to be made in these times? As to which point there are probably in the church of England persons of different opinions.

SOME persons think that even these moderate concessions, whilst they would not have any good effects on considerable numbers of dissenters, would be likely to disgust and offend many of our own communion: because they will apprehend, that greater ones are designed to be made, as soon as there shall be a favourable conjuncture for them; for, indeed, upon this principle, that, "we ought not to retain the practice of any things indifferent in themselves, that will cause any Christians to keep out of our communion," it follows, that we ought to lay aside, not only the surplice, but the other habits of the bishops and clergy, their ecclesiastical courts, the time of communion, the use of organs, the peoples responses in our service, the festivals of saints, and even those of Christmas, Easter, and Whitsuntide, the Lent fast, &c. As, therefore, the dissenters will be likely to consider the things, at present to be altered, as being given up, either in acknowledgment of the truth of their general principle, or in compliance with their importunity; they will be likely to be more stiff in keeping out, and at the same time more importunate in their demands, to be let into our communion upon their own terms. And as numbers who now are not of their party, yet observing how they gain upon the church by degrees, will think they are likely to carry their point in the end, they will become more disposed to favour and adhere to them. The right way, therefore, in the judgment of those persons whose opinions I am representing, will be to adhere

[i] See Maddox vindicated, p. 210, &c.

to the present constitution of our church, which is, in all its parts, strictly lawful and defensible. This course, which will have the reputation of a rational and laudable constancy, will be at the same time out of the reach of any just censure. It will check and discourage the spirit of innovation and unsettlement, which wise men have always disliked, and which, at present, so much abounds; and will be, in the end, most likely to bring over the greatest numbers of the dissenters to us, when they find that even in these times, from which they had the greatest hopes, they will not be likely to gain any points, by mere importunity or interest, against reason.

OTHERS in the church of England (who are more influenced by the fear of offending any Christian brethren, though weak, and by a charitable desire of gaining them) think it would be right for the church to go as far in her concessions to the dissenters as she reasonably and safely can, even though it may not be likely that many dissenters will, at present, be influenced by them; because that conduct will shew a charitable and truly Christian disposition in the church, which will undoubtedly be a just reputation to her, and may be likely both to soften the dissenters at present by this indication of her real benevolence towards them, and gain more upon them hereafter, as their prejudices wear off; or, if not, yet the church will not have done herself any harm, since she will not have parted with any things that are really necessary, or now even so much as serviceable to her: and she will have shewn her good and reasonable disposition before God, who will be likely to bless and prosper her the more, and men, in general, to esteem and reverence her for it.

Now, without all doubt, if this condescending course was most likely to please God, it ought to be taken; but God will, certainly, be pleased with that which is likely to have most good effects upon the whole. It cannot, justly, be conceived to be his will, that, in compliance with the groundless scruples of weak brethren, any course should be taken that will tend to produce animosities in others, or civil commotions, and all the other terrible ill effects that are likely to follow upon them. It can only be supposeable, that it will be most agreeable to him those measures should be taken which are most likely to be conducive to the quiet and welfare of the whole.

Now one cannot make a true judgment of that matter, without knowing well what the real dispositions of the generality of the people of our own church, as well as of the dissenters, are; especially, whether, if any such concessions should be proposed, either in convocation or in parliament, they would not breed great heats and differences? and whether they would not be pushed farther than they ought to go? These questions must be left to the wisdom and judgment of those who are well acquainted with the characters of the chief clergy and laity, who have parts in the legislature, and with the general dispositions of the people in this kingdom. But however this point of making concessions may be determined, it will, I conceive, be, in the first place, right inviolably to preserve and to perfect the toleration, if any thing be wanting in it: and, secondly, to treat the dissenters with all Christian charity and brotherly kindness, and amicable applications, to soften the spirits of our people towards them: but, at the same time, it will be necessary to prevent violent dissenters from being able to subvert or hurt our ecclesiastical constitution. I do not contend, that this must always be done by the Sacramental Test; for, though I think this method not unlawful, yet I do acknowledge it to be attended with some ill consequences, and had rather some other method could be found for that purpose: but it ought to be fully equivalent to this test, to keep out the violent dissenters from posts of power and profit: for if this test were to be taken away, and such dissenters were to work themselves into many posts of power, influence, and profit, as they soon would do, by being chosen to represent corporate towns, they would, in that case, be as able, as they would certainly be willing, to undermine and subvert, or, at least, much hurt, the constitution of the church of England and establishment, and by consequence the national welfare: and though, perhaps, they might not succeed for a time, yet there would, at least, be great animosities, discords, and perhaps disturbances and commotions, occasioned by the contentions of these opposite parties, for and against the church.

THESE ill effects can only be prevented (mankind being disposed as they are and will be) by keeping the violent dissenters out of civil places, and thereby hindering the increase of their power and influence, and their hopes of ever attacking the ecclesiastical constitution with success; which

which constitution, whatever some may think, could not be destroyed without the utmost danger of destruction to the civil establishment also.

THIS exclusive method, therefore, ought, in prudence and due regard to the public peace and welfare, to be taken: and if it be truly for the public welfare, it must certainly be just, as well as expedient; for the civil capacities and rights, and emoluments of all members of a society or nation, ought to be submitted to, and limited by the consideration of the public welfare.

The End of the FIRST PART.

T R A C T S

ON THE

L I B E R T Y,

SPIRITUAL and TEMPORAL,

OF

SUBJECTS in ENGLAND.

P A R T II.

TEMPORAL LIBERTY.

TRACT I.

Of the Liberty of the Subjects in Judicial Proceedings, as to Matters both Criminal and Civil.

MANKIND are often so much influenced by their education, by custom and example, in their judgment of things, that I doubt not but we may meet with many persons, born and educated under absolute monarchy, who not only are easy under that kind of government, but prefer it to any other, even to those regal ones which have any limitation upon them. Several French writers have made no difficulty of publishing to the world their sentiments to this purpose.

PART II. B

pose [a].—And no doubt, as to secrecy, to a ready and effectual execution of their counsels, and to several other articles of great importance, an unlimited monarchy would be justly preferable to all other forms of government [b], because in free constitutions the forms of government must necessarily be more complicated and slow, so that in these the same secrecy cannot always be kept, nor the same dispatch made, nor the same steadiness of measures always pursued; and if men could be sure of having at all times wise and good princes, who would make a right use of their power, and would take care to have ministers of the like capacities and dispositions, the wiser part of mankind would always prefer an absolute monarchy before any other kind of government: but whoever hopes to see these things constantly, in the usual course of the world, will be, for the most part, disappointed. Human nature is so liable to be corrupted, that, when a prince can do whatever he wills, he is too apt to do that which he ought not.

If an absolute prince be sometimes good natured, he may forbear ~~doing cruel or oppressive things~~, and make no breaches upon the liberty or property of his subject: but, as Brutus said to Cæsar, “Quid si nolit [c]?” The very apprehension of this is sufficient to break a man’s spirit, or keep him under an insecurity inconsistent with happiness. It either cramps and stints him, as Longinus observes, or else it gives him such a secret uneasiness (on his own account, or that of his country) as is sufficient to take off the relish of all other enjoyments.

THE nobility of France (at least such as were so before they were enslaved) who, that they might domineer over others and serve a present turn, suffered the crown to usurp all the liberties of the people till they were quite mastered, were at length, brought under the same tyrannical yoke with their inferiors: and, I believe, there are but few of the principal nobility of that nation, not excepting their great officers of

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state, who do not envy us here for our freedom, and repine in private at the slavery which they groan under [d].

For these reasons, men, who have experienced, or observed from history, the mischiefs resulting from absolute monarchies, have sometimes gone into Aristocracies; and, when they were weary of them, at length even into Democracies; hoping that, when the people governed themselves, their interest would lead them to do it well. But both these forms have been found to be attended with great inconveniencies [e], so that in Greece, where they had those kind of governments with various limitations, the best writers in politics came to fix upon a limited monarchy, with a mixture of Aristocracy and Democracy, as the most expedient form [f]. And they had accordingly models of this sort in Crete, Lacedæmon, and other places.

THE northern nations also fixed upon this form, as the most expedient both for liberty and for conquest. But I will venture to affirm that neither among the antients, nor among the moderns, was there any government better formed, upon a balance of its several parts, for producing and preserving the happiness of a nation, than that of England is at present. Some of the Gothic nations were at first, upon models much like to that in our nation about the same time; but theirs soon began to be corrupted, and went on growing worse, while that of England, by the steps I shall hereafter observe, improved: so that in the time of our King Edward IV, that judicious and impartial writer, Le Sieur des Comines [g], preferred England to any other nation in point of government. And if this was true then, it is much more so now, when the greatest inconveniencies are remedied, and the state of our liberty is much improved beyond what it was at that time. Mess. Boulainvilliers and Montesquieu make no difficulty of owning it, and

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IN treating of the freedom of subjects in England, the thing that comes naturally first into view is, the security we have of not being long detained in prison (in case we be at any time committed to it) without just cause or due process of law. Our condition, in this respect, differs not a little to our advantage from those of most other subjects in Europe.

I NEED not inform the public how every one in France is liable to be treated, in case he falls under the displeasure of the court, about matters of state: without any charge made against him upon oath, or any examination taken of him by a magistrate, an order or writ under the signet royal is sufficient to cause him, whatever his rank or quality is, to be not only arrested, but carried instantly away to any prison in the kingdom, and there to be kept in the closest confinement, without any means of procuring his liberty, as long as the court shall think fit to deny it: however able he might be to give such proofs of his innocence, as would be satisfactory to impartial judges, if his friends, or agents, were allowed to come to him, or he had the use of his papers and knowledge of his accusers. He may be incapable of doing this when secluded from all correspondence, and when he is not so much as examined at all. At this rate, he may continue for a number of years in doleful solitude, to the impairment of his health, and disorder of his estate: and if at last he gets out, he has no remedy; no action of false imprisonment or damages. The ministers, by whose procurement perhaps he was imprisoned, are safe under the royal prerogative. Now what opportunity, and what temptation, this may give to ill ministers to proceed thus against persons, with whom they are displeased, may be easily

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It may be more material to observe, that the nobility and parliaments of that kingdom, very sensible of the hardships which an abuse of this power has brought upon them, have, at different times, made remonstrances against it [i]. In the beginning of the reign of Lewis IX, about A. D. 1226, the greatest part of the nobility requested Queen Blanch, who was mother and guardian to that prince, "That, according to the custom of France, against the time of his coronation, all persons in prison, especially the counts of Flanders and Boulogne, should be discharged, who, in violation of the liberties of the kingdom, had been kept under close confinement for twelve years together." The queen soon after, in an assembly of the states, set free these imprisoned lords [k]. But her doing it availed little towards the liberty of the subjects; for the practice of imprisoning men at the will the court went on as before. The Cardinal de Retz [l] tells us, that by an ancient ordinance made by some of the kings of France at the request of the states of that kingdom, it was provided that no one in it should be kept in prison above three days without being examined by proper authority; and the parliament of Paris, in its contests with the court in 1648, made a new declaration to that purpose, which the court, was at that time obliged to allow. But it produced very little effect, for the court, after it had gained its point upon the parliament, still practised as it did before: it imprisoned men on what occasions, and for what times, it pleased, without allowing them any trial; which practice it continues to this day: as does also the court of Spain, and all other absolute princes in Europe.

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tution allowed men to be bailed in all cases. By the common law, anciently, says Lord Coke [m], a man accused or indicted of high treason, or of any felony whatsoever, was bailable upon good security; so that the gaol was only his pledge and surety who could find no other: for the law of England, says the same learned author, is a law of mercy, that the innocent shall not be worn or wasted by long imprisonment, but speedily come to his trial, and that prisoners for criminal causes be humanely dealt withal.

BUT after the Norman conquest it was provided, that, not only in the case of homicide and high treason, but in most other criminal cases, the offender was not bailable [n]. And even when innocent persons were committed and detained in prison, they were obliged to sue out writs, *De odio et atia*, from the court of Chancery, for their relief [o]. Several of our kings after this æra had little regard to the part of the common law, but on the slightest pretences, or unjust suspicions, imprisoned men of all ranks, and kept them in confinement as long as they pleased. We are told, for instance, by Roger Hoveden, that, among the persons who were set at liberty upon Richard the First's accession to the throne, "there were all such as had been taken and "kept in prison at the will of the king, or that of his justice, who "were not confined pursuant to a legal proceeding by the county or "hundred, or by appeal;" which passage manifestly implies that there were considerable numbers of persons in that condition. The same kind of tyranny was practised by the ministers of King Henry II, John, &c. and even the Barons, in king Edward the First's time, were very desirous of having the same power to imprison persons at their will, for trespasses done in their parks and ponds; but the king would not grant it [p].

IN opposition to these practices, the great charter of 9 Henry III, provided "that no freeman should be taken or imprisoned. Neither " (says the king [q]) will we go or send upon him, unless by the legal

[m] Coke's 2d Inst. p. 189. [n] Ibid. p. 42. 186. [o] See an account of the writs *De odio et atia*, in Bacon's Government of England, part I. p. 168. By the ancient law of the land, villains might be imprisoned by their lords without cause. Cotton's Posth. p. 224. [p] See Stat. Merton.

[q] "Nullus liber homo capiatur, vel imprisonetur—nec super eum ibimus, nec super eum mittemus, nisi "per legale iudicium parium suorum, aut per legem terræ." Magna Charta. Coke's 2d Institut. p. 45.

“ judgment of his peers, or by the law of the land.” But how solemn soever this charter was granted and confirmed, yet in a little time there were frequent breaches upon it, which plainly appears from a speech made in parliament, by the archbishop of Canterbury, 18 Edward I [r]. Among other grevances, he represented “ that very many freemen of the kingdom, had, without any guilt on their part, “ been committed by the king’s ministers, to divers prisons, as if they “ had been slaves of the meanest degree, therein to be kept. Of whom “ some died in prison with hunger, or grief, and the weight of their “ chains. From others they extorted at their pleasure infinite sums “ of money for their ransoms [s].” This speech, with the notoriety of the facts, had such an influence upon the parliament that they inflicted severe punishments upon some of the ministers and others.

THIS interposition of the parliament kept the ministry in order for some time; but in Edward the Third’s time the like practices began again, and many breaches were made upon the liberty of the subject; but so concerned was the nation to preserve this great blessing, and so vigorously did the parliament enforce their remonstrances to that prince, that a new act was gained in confirmation of it. For, in the fifth year of the reign of Edward III, ch. 9. it was enacted, “ That no man “ from henceforth shall be attached by any accusation, nor forejudged of “ his life or limb, nor his lands, tenements, goods nor chattels, seized “ into the king’s hands, against the form of the great charter, and the “ law of the land.” And again in the twenty-fifth year of the same reign there was another act made more full and expressive; for it says, “ That from henceforth none shall be taken by petition or suggestion, “ made to our lord the king or to his council, unless it be by indictment or presentment of his good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process “ made by writ original at the common law: and that if any thing “ be done against the same it shall be holden for none [t].” Again,

[r] See Echard’s Hist. vol. I. p. 309.

[s] Petyt, Misc. Parliament. Lond. 1680, in the Appendix.

[t] Sir Robert Cotton, Posth. p. 227. says, that this law was made upon the commitment of divers persons to the Tower, no man yet knoweth for what.

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 " nement, nor taken, nor imprisoned, nor disinherited, nor put to
 " death, without being brought in answer by due process of law [u]." Also in 38 Edward III, ch. 18. it is enacted, that, when suggestions, are made by any persons against others, the former shall find sureties before the king's grand council "to pursue their suggestions, and incur
 " the same pain that the other should have had if he were attainted,
 " in case their suggestions be found evil; and that then the process of
 " law be made against them without being taken and imprisoned against
 " the form of the said charter and other statutes [x]." And yet again, 42 Edward III, ch. 3. "at the request of the commons, by their peti-
 " tions put forth in this parliament, to eschew the mischiefs and dama-
 " ges done to divers of his commoners, by false accusers, which often-
 " times have made their accusations more for revenge and singular be-
 " nefit than for the profit of the king or of his people; which accused
 " persons some have been taken, and sometime caused to come before
 " the king's council by writ, and otherwise, upon grievous pain against
 " the law; it is assented and accorded, for the good governance of the
 " commons, that no man be put to answer without presentment be-
 " fore justices, or matter of record, or by due process and writ ori-
 " ginal, according to the old law of the land; and if any thing from
 " henceforth be done to the contrary, it shall be void in the law, and
 " holden for error."

ONE would think that here had been laws enough to secure this point of liberty, and, indeed, we find hardly any more complaints about grievances of this kind for some succeeding reigns; but, after

[u] See 3d Bulstrode 47. Hales's Hist. P. C. ch. 13. b. ii. p. 105. says, that regularly all courts and persons that have judicial power, by the common or statute law, for the conservation of the peace, have power to grant warrants for arresting of felons.

[x] Hales, in his Observations on Magna Charta, and the several Statutes of Edward III here quoted, says, that the question will be, What is the law of the land? For, if these preparatory arrests of felons be not against the law of the land, then they are not restrained by these statutes: and he delivers it as his opinion, that imprisonment before indictment is surely lawful, and not within the restraint of Magna Charta; and if so, then surely arrest is much more lawful, for it is but to bring persons to an examination, in order to their commitment, bail, or discharge; and there is no greater record of their commitment than of their arrest. Hist. P. C. ch. 13. b. ii. p. 109.

the civil wars between the houses of York and Lancaster, there was an act of parliament passed that justices of peace should have power to determine the validity of indictments [y]. In virtue of which Empson and Dudley proceeded: "Their manner was to cause divers subjects
 "to be indicted of fundry crimes, and so far forth to proceed in form
 "of law; but when the bills were found, to commit them, and never-
 "theless not to produce them in any reasonable time to their answers,
 "but to suffer them to languish long in prison, and by fundry artful
 "devices and terrors to extort from them great fines and ransoms,
 "which they termed compositions and mitigations [z]." The high-commissioned ecclesiastical court, erected in the reigns of Edward VI and Elizabeth, to enquire of, and provide against, papists and heretics, had a power to fine and imprison them: which was accordingly practised in many cases [a].

BUT great complaint was made, in the latter of those reigns, by all the judges, and the barons of the exchequer, "That divers persons, were
 "committed, at several times, to several prisons, without good cause:
 "and, upon writs issued out of the courts of law for their discharge, they
 "have been again imprisoned, by some noblemen and counsellors, in
 "secret prisons, or lawful office, so that the courts did not know whither
 "to direct their writs for their relief; and serjeants and others of the
 "courts have been imprisoned for executing such writs: and though
 "after upon these the judges had declared under their hands against
 "such practices as illegal and that the cause of commitment ought to
 "be specified in any warrant from the queen and council, there did
 "follow in that reign more quietness than before [b]."

YET still the same claim was continued, and carried into execution, on the part of the crown, and the judges did not continue to oppose it, or not with any effect; for in King James the First's reign, Sir W. Rawleigh represented a justice of peace, and committed men with impunity: at last, the judges came to maintain, in Westminster-hall, that the crown and its ministers might lawfully imprison and detain men in custody, in

[y] See the act 11 Henry VII, ch. 3. which is not in the statute books, but in Coke's 4th Inst. p. 41.

[z] Petyt, Misc. Parl. p. 208.

[a] See Coll. Eccles. Hist.

[b] Lord Chief Justice Anderson's Reports, p. 297. in the Middle Temple Library.

several cases, which before were disallowed. For judge Doderidge says [c], "That the king may, by his absolute power, commit a nobleman
 " to prison, *durante beneplacito suo*, from whence he cannot be discharged
 " by bail or mainprize, nor by the common writ *de homine replegiando*.
 " And by the same power it is, if a nobleman be committed to prison by
 " the king's council, for they are incorporate to his highness, and do
 " command as with the king's mouth." "And in 3 Carol. I, term
 " Michaelmas, Lord Chief Justice Hyde, Justice Jones, Doderidge, and
 " Whitlock declared, by the mouth of the Lord Chief Justice, their un-
 " animous opinion, that Sir John Corbett and others, who had been
 " brought into the King's Bench, by the warden of Fleet, and the cause
 " of their commitment and detention shewn to be *per speciale mandatum*
 " *domini regis*, without assigning any other cause, ought not to be bailed,
 " but remanded to prison [d]."

Therefore, in vindicating this great point of liberty, the lords spiritual and temporal, and the commons of England, in parliament assembled, in 1627, 3 Carol. I, by their joint petition to that prince, declared and requested, as their birth-right, that no freeman should be taken or imprisoned, or be out-lawed or exiled, or in any manner be destroyed, nor disinherited, nor put to death, without being brought to answer by due process of law [e]. To which the king answered, without any saving of the rights of the crown, *Soit droit fait comme il est désiré* [f]. And afterwards we are informed that this bill of rights passed into an act [g].

BUT as there were afterwards several illegal commitments and imprisonments, during the course of this reign, and the following usurpation, and in the next reign there was a great disposition in the ministers to extend the royal prerogative; and as sheriffs, gaolers, &c. often used oppressive delays, even on frivolous excuses, which were very expensive to prisoners, before they would make returns to the writs issued out for their relief, it was therefore at last found necessary to settle this matter once for all, in the noted statute of 31 Carol. II, called the act of *Habeas Corpus*. Wherein it is provided that, in the case of any person notim-

[c] Treatises of the Nobility, p. 159. edit. Lond. 1658.

[d] State Trials, vol. vii. p. 140.

[e] English Liber. p. 180.

[f] Ibid. p. 185.

[g] See the Bill of Rights in Rapin, 1627.

prisoned for treason or felony, specially expressed in the warrant for his commitment, if a writ of *Habeas Corpus* shall be brought on his behalf to the sheriff or gaoler, and due security given for paying the charge of bringing, and, if need be, carrying back the prisoner, and for his not making an escape, that then he shall, within three days after the service of the writ, be brought before the lord chancellor, or the judges of that court from whence the writ shall issue; and the true cause of his imprisonment shall to them be certified, unless he be committed in any place above twenty miles distant from the place where such court or person is: and if it be beyond twenty miles, and not above a hundred miles, then he is to be brought within twenty days at furthest. And if the commitment be made out of term time, application may be made, on the prisoner's behalf, to the lord chancellor, lord keeper, or any of the king's justices or barons, of the degree of the coif; and the said lord chancellor, judge, or baron, upon viewing a copy of his commitment, or upon oath made that a copy of it was denied, shall grant a writ of *Habeas Corpus*, under the seal of the court where he is a judge. Upon which writ directed to the gaoler, and returnable immediately before the said judge, or any other judge of any of the said courts, the keeper of the prison shall, within the times before expressed, bring the prisoner before the lord chancellor, or some one of the judges, with the true causes of his detainer. And thereupon the said chancellor or judge, unless it appears that the commitment is for a matter in which bail is not allowed by law, shall discharge the said prisoner from his imprisonment, upon his recognizance with one or more competent sureties, for his appearance at the king's bench the term following, or at the next assizes, or gaol delivery, of the county, city, or place, where the commitment was made, and shall certify the said writ, with the return thereof, and the recognizance, into the said court where the appearance is to be made. Provided that the prisoner hath not wilfully neglected, by the space of two whole terms after his imprisonment, to pray an *Habeas Corpus* for his enlargement; for, in case of such neglect, he shall not have any *Habeas Corpus* granted in vacation time. If any keeper shall neglect or refuse to make such returns, or to bring the bodies of the prisoners within the time before specified, or shall refuse to deliver, within six hours after demand, to the

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prisoner,

prisoner, or any person applying on his behalf, a true copy of the warrant of commitment, he shall forfeit, for the first offence, to the party grieved 100 *l.* for the second offence 200 *l.* and shall also be incapable of holding his office any longer. If any prisoner, discharged by virtue of this act, shall be recommitted by any one, that latter person who has made the fresh commitment, or any one who knowingly aids him in it, shall forfeit to the party grieved 500 *l.* In case that a prisoner, who is committed for high-treason or felony, plainly or specially expressed, shall, in open court, in the first week of the term, pray to be brought to his trial, and yet shall not be indicted some time in the next term, or sessions of Oyer and Terminer, the judges, upon motion made to them in open court the last day of the term, are obliged to set him at liberty upon bail [h]; unless it appears upon oath that the king's witnesses could not be produced in the same term: and if he shall not be indicted and tried the second term, he shall be discharged from his imprisonment. No prisoner shall be removed from one prison or custody to another, without an *Habeas Corpus*, or some other legal writ or warrant, except in case of fire, infection, or other necessity. If any person signs, or acts under, a warrant for removing a prisoner contrary to this act, he is liable to the pains and forfeitures above mentioned. If the lord chancellor, or any of the judges, shall refuse to grant a writ of *Habeas Corpus*, upon due application, they shall forfeit 500 *l.* to the party grieved. No subject of this realm, and inhabitant in the same, shall be sent prisoner into Scotland, or into any place beyond the seas. If he be, he shall have an action of false imprisonment against all persons concerned in it, of whom he shall recover treble costs besides damages, which last shall not be less than 500 *l.* And every person who shall make or sign a warrant for such imprisonment, and be lawfully convicted thereof, shall be henceforth disabled to bear any office of trust or profit in this kingdom; shall incur a præmunire; and be incapable of any pardon from the king, his heirs, or successors.

[h] And bail in this and all other cases ought not to be excessive; see the statute of 1 William and Mary.

By these provisions, effectual care is taken that no man shall be too long kept in prison: he must soon be brought to his trial, which is what every innocent man under suspicion should earnestly desire. In the mean while, it is one circumstance of no small advantage, that the certainty of a man's being soon brought to trial, or even a probability of being at any time brought before the court by *Habeas Corpus*, in a great measure prevents ill usage in prison. I mean the suffering such hardships or violences as are frequently in the prisons of other countries; and were so formerly in those of our own.

MONSIEUR DE COMINES, speaking of Lewis XI of France, says, "That he caused several cruel prisons to be made, some of iron, and some of wood; but covered with iron plates both within and without, with terrible cages about eight foot wide, and seven foot high. In one of which, this author tells us, that he himself was imprisoned, for eight months together, under Charles the Eighth, and had reason to curse the inventor of them [i]." These were things of an uncommon sort; but from Kenneville's history of the Bastile, we find that, in that and other of the usual prisons in France, there were very great hardships frequently put upon the prisoners; particularly locking their feet in a most diabolical ring, with a thick heavy chain, and a great globe of iron unreasonably weighty, which engines were called the king's nets. "Nevertheless," says that author, "I have seen many eminent men, for the most trivial offences against the court, in these prisons, with these nets about their legs [k]." And it may easily be conceived, that men of such dispositions as keepers of prisons often are, may vex and outrage their prisoners, when they know it will not be disagreeable to their superiors, or when it will serve to gratify their own ill passions, especially when they know the abused prisoners can have no opportunity of complaining.

In England, Bracton says [l], it has been an ancient maxim of our law, that the prison is for custody, not for punishment. And another author says [m], "And because it is forbidden that none be pained before judg-

[i] Mem. b. vi. p. 401. Eng. edit. fol. 105.

[k] Fleta, lib. i. cap. 26. p. 39.

[l] Lib. iii. cap. 6.

[m] Mirror, Fr. edit. p. 130. chap. ii. sect. 9.

“ment, the law requireth that none be put to terrors, nor in any horrible or dangerous place; but it is lawful for gaolers to fetter those they doubt, so as the fetters weigh not more than twelve ounces.”

BUT notwithstanding this, we have had instances, in our own history, of great cruelties and hardships exercised upon persons in prison. King John caused Geoffry Arch-deacon of Norwich to be imprisoned, and put in bonds, and, in a few days, a leaden coope to be put upon him; with the pressure of which, and for want of victuals, he soon died [n]. In Richard the Second's reign, an Irish monk, having accused the duke of Lancaster, and being imprisoned in order to make good his charge, was, by the duke's procurement, cruelly murdered. In this time likewise the duke of Glocester was killed in a prison at Calais. And these cruelties were practised, not only at the command of the kings and their ministers; but even the gaolers have been audacious enough to make a practice of putting great hardships upon their prisoners, in order to make them become appealers, *i. e.* to accuse other persons of certain crimes, by which means the gaolers would come to have the custody of them, and profits of their goods. It is therefore provided by 1 Edward III. ch. 7. that the justices of assize shall enquire into such compulsions, punishments, and torments. Again, 14 Edward III. ch. 10. in order to prevent such practices, it is enacted, that the sheriffs should have the custody of the gaols, and should put in such under-keepers for whom they will answer. And for any keeper to make a prisoner, whom he hath in his ward, to become an appellor against his will, is felony. Bracton says [o], “Solent præfides in carcere continendos damnare, ut in vinculis contineantur; sed hujusmodi interdicta sunt a lege, quia carcer ad continendos, non ad puniendos, haberi debet.” Therefore, saith Lord Coke [p], every imprisonment is taken and deemed in law *Duritia, dureffe*. A little addition to it by the gaoler is too great *dureffe*. And *ibid.* if the gaoler keeps the prisoner more streightly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by common law. And this is the cause why, if a prisoner dies in prison, the coroner

[n] Brad. Hist. England, p. 480.

[o] Lib. iii. cap. 6. fol. 154.

[p] 3d Inst. p. 91.

ought

ought to sit upon him, and, by verdict of twelve jurors, determine whether any foul means had been used in order to bring him to his death.

A MAN therefore is safe, during his being in custody; and, when his trial is to come on, he hath the great advantage of being tried by his country, that is, by men of the same order and condition with himself. For first, the bill of indictment, against him, must be found by the grand jury, consisting of twelve or more gentlemen, or freemen of substance and credit, in the county where the fact is supposed to have been committed [q]; who, being sworn to make true presentment, upon examining witnesses, or weighing other proofs that may have come to their knowledge, are either to allow or reject the indictment, as true or false: in doing which at least twelve of them must agree together [r]. Unless they do this, the party indicted cannot be put upon his trial by the petty jury [s]. Now this is of great advantage, in order to prevent an innocent person's life or reputation from being brought any further into hazard, if they do not find the bill; which it cannot be on that same indictment. It is enacted by 23 Edward I. called *Articuli super charta*, cap. 9. that the sheriffs shall put into inquests and juries such as be next neighbours, most sufficient, and least suspicious. And by 23 Edward III. ch. 6. that justices of assizes shall have commissions sufficient to enquire of sheriffs for putting into pannels jurors suspect and of evil fame. It is further enacted by 34 Edward III. that all pannels shall be made of the next neighbours, which shall not be suspected nor procured. And that the ministers who act contrary thereto shall be punished before the justices who take the inquest. But the principal statutes which relate to the return of grand juries are the 11 Henry IV. ch. 9. and 3 Henry VIII. ch. 12. The former of which, reciting that persons not guilty had been indicted by conspiracy, abetment, &c. enacts, that no indictment be made from henceforth but by inquest of the king's

[q] Hawk. P. C. p. 215. b. ii.

[r] During the old Saxon constitution, indictments might be made by any one legal person. See Bacon, p. i. p. 54. but afterwards, in order to prevent persons being unduly slandered, and put upon trial for their lives, the Mirror says, that Henry I ordained, that no man should be tried without an indictment made by twelve persons.

[s] By 25 Edward III. and 42 Edward III. it is enacted, that, for preventing mischief, done by false accusers, none shall be put to answer unless it be by indictment of good and lawful people of the same neighbourhood where such deeds be done: English Liber. p. 254. See *ibid.* p. 255. and 258. the duty and power of the grand jury.

which constitution, whatever some may think, could not be destroyed without the utmost danger of destruction to the civil establishment also.

THIS exclusive method, therefore, ought, in prudence and due regard to the public peace and welfare, to be taken: and if it be truly for the public welfare, it must certainly be just, as well as expedient; for the civil capacities and rights, and emoluments of all members of a society or nation, ought to be submitted to, and limited by the consideration of the public welfare.

The End of the FIRST PART.

T R A C T S

ON THE

L I B E R T Y,

SPIRITUAL and TEMPORAL,

O F

SUBJECTS in ENGLAND.

P A R T II.

TEMPORAL LIBERTY.

TRACT I.

Of the Liberty of the Subjects in Judicial Proceedings, as to Matters both Criminal and Civil.

MANKIND are often so much influenced by their education, by custom and example, in their judgment of things, that I doubt not but we may meet with many persons, born and educated under absolute monarchy, who not only are easy under that kind of government, but prefer it to any other, even to those regal ones which have any limitation upon them. Several French writers have made no difficulty of publishing to the world their sentiments to this purpose.

pose [a].—And no doubt, as to secrecy, to a ready and effectual execution of their counsels, and to several other articles of great importance, an unlimited monarchy would be justly preferable to all other forms of government [b], because in free constitutions the forms of government must necessarily be more complicated and slow, so that in these the same secrecy cannot always be kept, nor the same dispatch made, nor the same steadiness of measures always pursued; and if men could be sure of having at all times wise and good princes, who would make a right use of their power, and would take care to have ministers of the like capacities and dispositions, the wiser part of mankind would always prefer an absolute monarchy before any other kind of government: but whoever hopes to see these things constantly, in the usual course of the world, will be, for the most part, disappointed. Human nature is so liable to be corrupted, that, when a prince can do whatever he wills, he is too apt to do that which he ought not.

If an absolute prince be sometimes good natured, he may forbear ~~doing cruel or oppressive things~~, and make no breaches upon the liberty or property of his subject: but, as Brutus said to Cæsar, “Quid si “nolit [c]?” The very apprehension of this is sufficient to break a man’s spirit, or keep him under an insecurity inconsistent with happiness. It either cramps and stints him, as Longinus observes, or else it gives him such a secret uneasiness (on his own account, or that of his country) as is sufficient to take off the relish of all other enjoyments.

THE nobility of France (at least such as were so before they were enslaved) who, that they might domineer over others and serve a present turn, suffered the crown to usurp all the liberties of the people till they were quite mastered, were at length, brought under the same tyrannical yoke with their inferiors: and, I believe, there are but few of the principal nobility of that nation, not excepting their great officers of

[a] Bayle’s *Response au provincial*, artic. DE DESPOTISM. — Ramsay’s *Essai sur le Gouvernement*, p. 150, 151.

[b] “L’Autorité absolue est le plus sur moyen de rendre un état florissant et redoutable à ses ennemis.” *Test. polit. Mr. Louvois*, part ii. p. 382. “L’Autorité limitée du souverain, “et celle des républiques, ont plus des mauvaises cotes, et sont sujettes à plus des fâcheuses suites “pour l’état, et pour le peuple, que n’est le pouvoir arbitraire.” *Ibid.* p. 383. [c] Tull. *Epist. ad Brutum*, lib. ii.

state, who do not envy us here for our freedom, and repine in private at the slavery which they groan under [d].

For these reasons, men, who have experienced, or observed from history, the mischiefs resulting from absolute monarchies, have sometimes gone into Aristocracies; and, when they were weary of them, at length even into Democracies; hoping that, when the people governed themselves, their interest would lead them to do it well. But both these forms have been found to be attended with great inconveniencies [e], so that in Greece, where they had those kind of governments with various limitations, the best writers in politics came to fix upon a limited monarchy, with a mixture of Aristocracy and Democracy, as the most expedient form [f]. And they had accordingly models of this sort in Crete, Lacedæmon, and other places.

THE northern nations also fixed upon this form, as the most expedient both for liberty and for conquest. But I will venture to affirm that neither among the antients, nor among the moderns, was there any government better formed, upon a balance of its several parts, for producing and preserving the happiness of a nation, than that of England is at present. Some of the Gothic nations were at first, upon models much like to that in our nation about the same time; but theirs soon began to be corrupted, and went on growing worse, while that of England, by the steps I shall hereafter observe, improved: so that in the time of our King Edward IV, that judicious and impartial writer, Le Sieur des Comines [g], preferred England to any other nation in point of government. And if this was true then, it is much more so now, when the greatest inconveniencies are remedied, and the state of our liberty is much improved beyond what it was at that time. Mess. Boulainvilliers and Montesquieu make no difficulty of owning it, and

[d] Herodotus, in the person of Otanes, says, that “une autorité sans frein corrompt facilement l’homme le plus vertueux, et le depouille de son meilleurs qualités.” Ramsay on Government, p. 96. [e] Ramsay’s Essay on Civil Government; the Persian Grandees Arguments against Aristocracy and Democracy.

[f] Plato, in his Politicus, says, *Μοναρχία τυχεῖσθαι ἐν γράμμασιν, ἔς νόμους λέγομεν, ἀρίστη πᾶσων.*

[g] “Et selon mon avis, s’il y a entre toutes les seigneuries du monde, dont j’ai cognoissance, où la chose publique est mieux traitée, et où il y a moins de violence sur le peuple, c’est l’Angleterre.” Memoirs, lib. v. p. 413.

so does Voltaire [h]; but that the reason for so doing may more clearly appear, I shall specify the principal branches of our civil liberty, as they stand at present, and occasionally note the great advantages we have over other nations, as well as over this nation itself in former times.

IN treating of the freedom of subjects in England, the thing that comes naturally first into view is, the security we have of not being long detained in prison (in case we be at any time committed to it) without just cause or due process of law. Our condition, in this respect, differs not a little to our advantage from those of most other subjects in Europe.

I NEED not inform the public how every one in France is liable to be treated, in case he falls under the displeasure of the court, about matters of state: without any charge made against him upon oath, or any examination taken of him by a magistrate, an order or writ under the signet royal is sufficient to cause him, whatever his rank or quality is, to be not only arrested, but carried instantly away to any prison in the kingdom, and there to be kept in the closest confinement, without any means of procuring his liberty, as long as the court shall think fit to deny it: however able he might be to give such proofs of his innocence, as would be satisfactory to impartial judges, if his friends, or agents, were allowed to come to him, or he had the use of his papers and knowledge of his accusers. He may be incapable of doing this when secluded from all correspondence, and when he is not so much as examined at all. At this rate, he may continue for a number of years in doleful solitude, to the impairment of his health, and disorder of his estate: and if at last he gets out, he has no remedy; no action of false imprisonment or damages. The ministers, by whose procurement perhaps he was imprisoned, are safe under the royal prerogative. Now what opportunity, and what temptation, this may give to ill ministers to proceed thus against persons, with whom they are displeased, may be easi-

[h] "Il me semble à moi que, s'il y a un gouvernement, dont on pourroit de nos jours proposer pour modèle la sagesse, c'est celui d'Angleterre. Là le parlement est l'arbitre du peuple, et du roi; et le roi a tout le pouvoir de faire du bien, mais il n'en a point pour faire du mal." Voltaire, *Antimachiavel*, p. 222.

ly conceived; and in fact how often it hath done so, the histories of France afford us so many examples, that I need not quote any particular ones.

It may be more material to observe, that the nobility and parliaments of that kingdom, very sensible of the hardships which an abuse of this power has brought upon them, have, at different times, made remonstrances against it [i]. In the beginning of the reign of Lewis IX, about A. D. 1226, the greatest part of the nobility requested Queen Blanch, who was mother and guardian to that prince, "That, according to the custom of France, against the time of his coronation, all persons in prison, especially the counts of Flanders and Boulogne, should be discharged, who, in violation of the liberties of the kingdom, had been kept under close confinement for twelve years together." The queen soon after, in an assembly of the states, set free these imprisoned lords [k]. But her doing it availed little towards the liberty of the subjects; for the practice of imprisoning men at the will the court went on as before. The Cardinal de Retz [l] tells us, that by an ancient ordinance made by some of the kings of France at the request of the states of that kingdom, it was provided that no one in it should be kept in prison above three days without being examined by proper authority; and the parliament of Paris, in its contests with the court in 1648, made a new declaration to that purpose, which the court, was at that time obliged to allow. But it produced very little effect, for the court, after it had gained its point upon the parliament, still practised as it did before: it imprisoned men on what occasions, and for what times, it pleased, without allowing them any trial; which practice it continues to this day: as does also the court of Spain, and all other absolute princes in Europe.

THERE have been times when this same power has been claimed, and with the like rigour exercised, by the kings of England; not that there was any just ground in law for it; for the ancient Saxon consti-

[i] Matt. Paris in Hen. III, edit. Lond. 1640. p. 335. C. De Boulainvilliers, Etat de la France, tom. iii. p. 332. and the same of the ancient parliaments of France.

[k] Count Boulainvilliers, Parliament of France, p. 58. says, that only the count of Flanders was set at liberty, and that he was forced to pay a large sum for it, towards the charge of the king's inauguration.

[l] Tom. i. p. 161 & 164. edit. Amsterdam, 1719.

tution allowed men to be bailed in all cases. By the common law, anciently, says Lord Coke [m], a man accused or indicted of high treason, or of any felony whatsoever, was bailable upon good security; so that the gaol was only his pledge and surety who could find no other: for the law of England, says the same learned author, is a law of mercy, that the innocent shall not be worn or wasted by long imprisonment, but speedily come to his trial, and that prisoners for criminal causes be humanely dealt withal.

BUT after the Norman conquest it was provided, that, not only in the case of homicide and high treason, but in most other criminal cases, the offender was not bailable [n]. And even when innocent persons were committed and detained in prison, they were obliged to sue out writs, *De odio et atia*, from the court of Chancery, for their relief[o]. Several of our kings after this æra had little regard to the part of the common law, but on the slightest pretences, or unjust suspicions, imprisoned men of all ranks, and kept them in confinement as long as they pleased. We are told, for instance, by Roger Hoveden, that, among the persons who were set at liberty upon Richard the First's accession to the throne, "there were all such as had been taken and " kept in prison at the will of the king, or that of his justice, who " were not confined pursuant to a legal proceeding by the county or " hundred, or by appeal;" which passage manifestly implies that there were considerable numbers of persons in that condition. The same kind of tyranny was practised by the ministers of King Henry II, John, &c. and even the Barons, in king Edward the First's time, were very desirous of having the same power to imprison persons at their will, for trespasses done in their parks and ponds; but the king would not grant it [p].

IN opposition to these practices, the great charter of 9 Henry III, provided "that no freeman should be taken or imprisoned. Neither " (says the king [q]) will we go or send upon him, unless by the legal

[m] Coke's 2d Inst. p. 189. [n] Ibid. p. 42. 186. [o] See an account of the writs *De odio et atia*, in Bacon's Government of England, part I. p. 168. By the ancient law of the land, villains might be imprisoned by their lords without cause. Cotton's Posth. p. 224. [p] See Stat. Merton.

[q] "Nullus liber homo capiatur, vel imprisonetur—nec super eum ibimus, nec super eum mittemus, nisi " per legale iudicium parium suorum, aut per legem terræ." Magna Charta. Coke's 2d Institut. p. 45.

“ judgment of his peers, or by the law of the land.” But how solemn soever this charter was granted and confirmed, yet in a little time there were frequent breaches upon it, which plainly appears from a speech made in parliament, by the archbishop of Canterbury, 18 Edward I [r]. Among other grevances, he represented “ that very many freemen of the kingdom, had, without any guilt on their part, “ been committed by the king’s ministers, to divers prisons, as if they “ had been slaves of the meanest degree, therein to be kept. Of whom “ some died in prison with hunger, or grief, and the weight of their “ chains. From others they extorted at their pleasure infinite sums “ of money for their ransoms [s].” This speech, with the notoriety of the facts, had such an influence upon the parliament that they inflicted severe punishments upon some of the ministers and others.

THIS interposition of the parliament kept the ministry in order for some time; but in Edward the Third’s time the like practices began again, and many breaches were made upon the liberty of the subject; but so concerned was the nation to preserve this great blessing, and so vigorously did the parliament enforce their remonstrances to that prince, that a new act was gained in confirmation of it. For, in the fifth year of the reign of Edward III, ch. 9. it was enacted, “ That no man “ from henceforth shall be attached by any accusation, nor forejudged of “ his life or limb, nor his lands, tenements, goods nor chattels, seized “ into the king’s hands, against the form of the great charter, and the “ law of the land.” And again in the twenty-fifth year of the same reign there was another act made more full and expressive; for it says, “ That from henceforth none shall be taken by petition or suggestion, “ made to our lord the king or to his council, unless it be by indictment or presentment of his good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process “ made by writ original at the common law: and that if any thing “ be done against the same it shall be holden for none [t].” Again,

[r] See Echard’s Hist. vol. I. p. 309.

[s] Petyt, Misc. Parliament. Lond. 1680, in the Appendix.

[t] Sir Robert Cotton, Posth. p. 227. says, that this law was made upon the commitment of divers persons to the Tower, no man yet knoweth for what.

in the twenty-eighth of this reign, it is enacted, "That no man, of
 " what estate or condition that he be, shall be put out of land or te-
 " nement, nor taken, nor imprisoned, nor disinherited, nor put to
 " death, without being brought in answer by due process of law [u]." Also in 38 Edward III, ch. 18. it is enacted, that, when suggestions, are made by any persons against others, the former shall find sureties before the king's grand council "to pursue their suggestions, and incur
 " the same pain that the other should have had if he were attainted,
 " in case their suggestions be found evil; and that then the process of
 " law be made against them without being taken and imprisoned against
 " the form of the said charter and other statutes [x]." And yet again, 42 Edward III, ch. 3. "at the request of the commons, by their peti-
 " tions put forth in this parliament, to eschew the mischiefs and dama-
 " ges done to divers of his commoners, by false accusers, which often-
 " times have made their accusations more for revenge and singular be-
 " nefit than for the profit of the king or of his people; which accused
 " persons some have been taken, and sometime caused to come before
 " the king's council by writ, and otherwise, upon grievous pain against
 " the law; it is assented and accorded, for the good governance of the
 " commons, that no man be put to answer without presentment be-
 " fore justices, or matter of record, or by due process and writ ori-
 " ginal, according to the old law of the land; and if any thing from
 " henceforth be done to the contrary, it shall be void in the law, and
 " holden for error."

ONE would think that here had been laws enough to secure this point of liberty, and, indeed, we find hardly any more complaints about grievances of this kind for some succeeding reigns; but, after

[u] See 3d Bulstrode 47. Hales's Hist. P. C. ch. 13. b. ii. p. 105. says, that regularly all courts and persons that have judicial power, by the common or statute law, for the conservation of the peace, have power to grant warrants for arresting of felons.

[x] Hales, in his Observations on Magna Charta, and the several Statutes of Edward III here quoted, says, that the question will be, What is the law of the land? For, if these preparatory arrests of felons be not against the law of the land, then they are not restrained by these statutes: and he delivers it as his opinion, that imprisonment before indictment is surely lawful, and not within the restraint of Magna Charta; and if so, then surely arrest is much more lawful, for it is but to bring persons to an examination, in order to their commitment, bail, or discharge; and there is no greater record of their commitment than of their arrest. Hist. P. C. ch. 13. b. ii. p. 109.

the civil wars between the houses of York and Lancaster, there was an act of parliament passed that justices of peace should have power to determine the validity of indictments [y]. In virtue of which Empson and Dudley proceeded: "Their manner was to cause divers subjects
 " to be indicted of fundry crimes, and so far forth to proceed in form
 " of law; but when the bills were found, to commit them, and never-
 " theless not to produce them in any reasonable time to their answers,
 " but to suffer them to languish long in prison, and by fundry artful
 " devices and terrors to extort from them great fines and ransoms,
 " which they termed compositions and mitigations [z]." The high-commissioned ecclesiastical court, erected in the reigns of Edward VI and Elizabeth, to enquire of, and provide against, papists and heretics, had a power to fine and imprison them: which was accordingly practised in many cases [a].

BUT great complaint was made, in the latter of those reigns, by all the judges, and the barons of the exchequer, "That divers persons, were
 " committed, at several times, to several prisons, without good cause:
 " and, upon writs issued out of the courts of law for their discharge, they
 " have been again imprisoned, by some noblemen and counsellors, in
 " secret prisons, or lawful office, so that the courts did not know whither
 " to direct their writs for their relief; and serjeants and others of the
 " courts have been imprisoned for executing such writs: and though
 " after upon these the judges had declared under their hands against
 " such practices as illegal and that the cause of commitment ought to
 " be specified in any warrant from the queen and council, there did
 " follow in that reign more quietness than before [b]."

YET still the same claim was continued, and carried into execution, on the part of the crown, and the judges did not continue to oppose it, or not with any effect; for in King James the First's reign, Sir W. Rawleigh represented a justice of peace, and committed men with impunity: at last, the judges came to maintain, in Westminster-hall, that the crown and its ministers might lawfully imprison and detain men in custody, in

[y] See the act 11 Henry VII, ch. 3. which is not in the statute books, but in Coke's 4th Inst. p. 41.

[z] Petyt, Misc. Parl. p. 208.

[a] See Coll. Eccles. Hist.

[b] Lord Chief Justice Anderson's Reports, p. 297. in the Middle Temple Library.

several cases, which before were disallowed. For judge Doderidge says [c], "That the king may, by his absolute power, commit a nobleman
 " to prison, *durante beneplacito suo*, from whence he cannot be discharged
 " by bail or mainprize, nor by the common writ *de homine replegiando*.
 " And by the same power it is, if a nobleman be committed to prison by
 " the king's council, for they are incorporate to his highness, and do
 " command as with the king's mouth." " And in 3 Carol. I, term
 " Michaelmas, Lord Chief Justice Hide, Justice Jones, Doderidge, and
 " Whitlock declared, by the mouth of the Lord Chief Justice, their un-
 " animous opinion, that Sir John Corbett and others, who had been
 " brought into the King's Bench, by the warden of Fleet, and the cause
 " of their commitment and detention shewn to be *per speciale mandatum*
 " *domini regis*, without assigning any other cause, ought not to be bailed,
 " but remanded to prison [d]."

Therefore, in vindicating this great point of liberty, the lords spiritual and temporal, and the commons of England, in parliament assembled, in 1627, 3 Carol. I, by their joint petition to that prince, declared and requested, as their birth-right, that no freeman should be taken or imprisoned, or be out-lawed or exiled, or in any manner be destroyed, nor disinherited, nor put to death, without being brought to answer by due process of law [e]. To which the king answered, without any saving of the rights of the crown, *Soit droit fait comme il est désiré* [f]. And afterwards we are informed that this bill of rights passed into an act [g].

BUT as there were afterwards several illegal commitments and imprisonments, during the course of this reign, and the following usurpation, and in the next reign there was a great disposition in the ministers to extend the royal prerogative; and as sheriffs, gaolers, &c. often used oppressive delays, even on frivolous excuses, which were very expensive to prisoners, before they would make returns to the writs issued out for their relief, it was therefore at last found necessary to settle this matter once for all, in the noted statute of 31 Carol. II, called the act of *Habeas Corpus*. Wherein it is provided that, in the case of any person notim-

[c] Treatises of the Nobility, p. 159. edit. Lond. 1658.

[d] State Trials, vol. vii. p. 140.

[e] English Liber. p. 180.

[f] Ibid. p. 185.

[g] See the Bill of Rights in Rapin, 1627.

prisoned for treason or felony, specially expressed in the warrant for his commitment, if a writ of *Habeas Corpus* shall be brought on his behalf to the sheriff or gaoler, and due security given for paying the charge of bringing, and, if need be, carrying back the prisoner, and for his not making an escape, that then he shall, within three days after the service of the writ, be brought before the lord chancellor, or the judges of that court from whence the writ shall issue; and the true cause of his imprisonment shall to them be certified, unless he be committed in any place above twenty miles distant from the place where such court or person is: and if it be beyond twenty miles, and not above a hundred miles, then he is to be brought within twenty days at furthest. And if the commitment be made out of term time, application may be made, on the prisoner's behalf, to the lord chancellor, lord keeper, or any of the king's justices or barons, of the degree of the coif; and the said lord chancellor, judge, or baron, upon viewing a copy of his commitment, or upon oath made that a copy of it was denied, shall grant a writ of *Habeas Corpus*, under the seal of the court where he is a judge. Upon which writ directed to the gaoler, and returnable immediately before the said judge, or any other judge of any of the said courts, the keeper of the prison shall, within the times before expressed, bring the prisoner before the lord chancellor, or some one of the judges, with the true causes of his detainer. And thereupon the said chancellor or judge, unless it appears that the commitment is for a matter in which bail is not allowed by law, shall discharge the said prisoner from his imprisonment, upon his recognizance with one or more competent sureties, for his appearance at the king's bench the term following, or at the next assizes, or gaol delivery, of the county, city, or place, where the commitment was made, and shall certify the said writ, with the return thereof, and the recognizance, into the said court where the appearance is to be made. Provided that the prisoner hath not wilfully neglected, by the space of two whole terms after his imprisonment, to pray an *Habeas Corpus* for his enlargement; for, in case of such neglect, he shall not have any *Habeas Corpus* granted in vacation time. If any keeper shall neglect or refuse to make such returns, or to bring the bodies of the prisoners within the time before specified, or shall refuse to deliver, within six hours after demand, to the

prisoner, or any person applying on his behalf, a true copy of the warrant of commitment, he shall forfeit, for the first offence, to the party grieved 100 *l.* for the second offence 200 *l.* and shall also be incapable of holding his office any longer. If any prisoner, discharged by virtue of this act, shall be recommitted by any one, that latter person who has made the fresh commitment, or any one who knowingly aids him in it, shall forfeit to the party grieved 500 *l.* In case that a prisoner, who is committed for high-treason or felony, plainly or specially expressed, shall, in open court, in the first week of the term, pray to be brought to his trial, and yet shall not be indicted some time in the next term, or sessions of Oyer and Terminer, the judges, upon motion made to them in open court the last day of the term, are obliged to set him at liberty upon bail [h]; unless it appears upon oath that the king's witnesses could not be produced in the same term: and if he shall not be indicted and tried the second term, he shall be discharged from his imprisonment. No prisoner shall be removed from one prison or custody to another, without an *Habeas Corpus*, or some other legal writ or warrant, except in case of fire, infection, or other necessity. If any person signs, or acts under, a warrant for removing a prisoner contrary to this act, he is liable to the pains and forfeitures above mentioned. If the lord chancellor, or any of the judges, shall refuse to grant a writ of *Habeas Corpus*, upon due application, they shall forfeit 500 *l.* to the party grieved. No subject of this realm, and inhabitant in the same, shall be sent prisoner into Scotland, or into any place beyond the seas. If he be, he shall have an action of false imprisonment against all persons concerned in it, of whom he shall recover treble costs besides damages, which last shall not be less than 500 *l.* And every person who shall make or sign a warrant for such imprisonment, and be lawfully convicted thereof, shall be henceforth disabled to bear any office of trust or profit in this kingdom; shall incur a præmunire; and be incapable of any pardon from the king, his heirs, or successors.

[h] And bail in this and all other cases ought not to be excessive; see the statute of 1 William and Mary.

By these provisions, effectual care is taken that no man shall be too long kept in prison: he must soon be brought to his trial, which is what every innocent man under suspicion should earnestly desire. In the mean while, it is one circumstance of no small advantage, that the certainty of a man's being soon brought to trial, or even a probability of being at any time brought before the court by *Habeas Corpus*, in a great measure prevents ill usage in prison. I mean the suffering such hardships or violences as are frequently in the prisons of other countries; and were so formerly in those of our own.

MONSIEUR DE COMINES, speaking of Lewis XI of France, says, "That he caused several cruel prisons to be made, some of iron, and some of wood; but covered with iron plates both within and without, with terrible cages about eight foot wide, and seven foot high. In one of which, this author tells us, that he himself was imprisoned, for eight months together, under Charles the Eighth, and had reason to curse the inventor of them [i]." These were things of an uncommon sort; but from Kenneville's history of the Bastile, we find that, in that and other of the usual prisons in France, there were very great hardships frequently put upon the prisoners; particularly locking their feet in a most diabolical ring, with a thick heavy chain, and a great globe of iron unreasonably weighty, which engines were called the king's nets. "Nevertheless," says that author, "I have seen many eminent men, for the most trivial offences against the court, in these prisons, with these nets about their legs [k]." And it may easily be conceived, that men of such dispositions as keepers of prisons often are, may vex and outrage their prisoners, when they know it will not be disagreeable to their superiors, or when it will serve to gratify their own ill passions, especially when they know the abused prisoners can have no opportunity of complaining.

In England, Bracton says [l], it has been an ancient maxim of our law, that the prison is for custody, not for punishment. And another author says [m], "And because it is forbidden that none be pained before judg-

[i] Mem. b. vi. p. 401. Eng. edit. [k] Fleta, lib. i. cap. 26. p. 39. [l] Lib. iii. cap. 6. fol. 105. [m] Mirror, Fr. edit. p. 130. chap. ii. sect. 9.

"ment,

“ment, the law requireth that none be put to terrors, nor in any horrible or dangerous place; but it is lawful for gaolers to fetter those they doubt, so as the fetters weigh not more than twelve ounces.”

BUT notwithstanding this, we have had instances, in our own history, of great cruelties and hardships exercised upon persons in prison. King John caused Geoffry Arch-deacon of Norwich to be imprisoned, and put in bonds, and, in a few days, a leaden coope to be put upon him; with the pressure of which, and for want of victuals, he soon died [n]. In Richard the Second's reign, an Irish monk, having accused the duke of Lancaster, and being imprisoned in order to make good his charge, was, by the duke's procurement, cruelly murdered. In this time likewise the duke of Glocester was killed in a prison at Calais. And these cruelties were practised, not only at the command of the kings and their ministers; but even the gaolers have been audacious enough to make a practice of putting great hardships upon their prisoners, in order to make them become appealers, *i. e.* to accuse other persons of certain crimes, by which means the gaolers would come to have the custody of them, and profits of their goods. It is therefore provided by 1 Edward III. ch. 7. that the justices of assize shall enquire into such compulsions, punishments, and torments. Again, 14 Edward III. ch. 10. in order to prevent such practices, it is enacted, that the sheriffs should have the custody of the gaols, and should put in such under-keepers for whom they will answer. And for any keeper to make a prisoner, whom he hath in his ward, to become an appellor against his will, is felony. Bracton says [o], “Solent præfides in carcere continendos damnare, ut in vinculis contineantur; sed hujusmodi interdicta sunt a lege, quia carcer ad continendos, non ad puniendos, haberi debet.” Therefore, saith Lord Coke [p], every imprisonment is taken and deemed in law *Duritia*, *dureffe*. A little addition to it by the gaoler is too great *dureffe*. And *ibid.* if the gaoler keeps the prisoner more streightly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by common law. And this is the cause why, if a prisoner dies in prison, the coroner

[n] Brad. Hist. England, p. 480.

[o] Lib. iii. cap. 6. fol. 154.

[p] 3d Inst. p. 91.

ought

ought to sit upon him, and, by verdict of twelve jurors, determine whether any foul means had been used in order to bring him to his death.

A MAN therefore is safe, during his being in custody; and, when his trial is to come on, he hath the great advantage of being tried by his country, that is, by men of the same order and condition with himself. For first, the bill of indictment, against him, must be found by the grand jury, consisting of twelve or more gentlemen, or freemen of substance and credit, in the county where the fact is supposed to have been committed [q]; who, being sworn to make true presentment, upon examining witnesses, or weighing other proofs that may have come to their knowledge, are either to allow or reject the indictment, as true or false: in doing which at least twelve of them must agree together [r]. Unless they do this, the party indicted cannot be put upon his trial by the petty jury [s]. Now this is of great advantage, in order to prevent an innocent person's life or reputation from being brought any further into hazard, if they do not find the bill; which it cannot be on that same indictment. It is enacted by 23 Edward I. called *Articuli super charta*, cap. 9. that the sheriffs shall put into inquests and juries such as be next neighbours, most sufficient, and least suspicious. And by 23 Edward III. ch. 6. that justices of assizes shall have commissions sufficient to enquire of sheriffs for putting into pannels jurors suspect and of evil fame. It is further enacted by 34 Edward III. that all pannels shall be made of the next neighbours, which shall not be suspected nor procured. And that the ministers who act contrary thereto shall be punished before the justices who take the inquest. But the principal statutes which relate to the return of grand juries are the 11 Henry IV. ch. 9. and 3 Henry VIII. ch. 12. The former of which, reciting that persons not guilty had been indicted by conspiracy, abetment, &c. enacts, that no indictment be made from henceforth but by inquest of the king's

[q] Hawk. P. C. p. 215. b. ii.

[r] During the old Saxon constitution, indictments might be made by any one legal person. See Bacon, p. i. p. 54. but afterwards, in order to prevent persons being unduly slandered, and put upon trial for their lives, the Mirror says, that Henry I. ordained, that no man should be tried without an indictment made by twelve persons.

[s] By 25 Edward III. and 42 Edward III. it is enacted, that, for preventing mischief, done by false accusers, none shall be put to answer unless it be by indictment of good and lawful people of the same neighbourhood where such deeds be done: English Liber. p. 254. See *ibid.* p. 255. and 258. the duty and power of the grand jury.

lawful liege people, returned by the sheriffs, without any denomination to the sheriff, made by any person, of the names which by him should be impaneled. The latter of these statutes, having recited, "That many
 "oppressions had been by the untrue demeanor of sheriffs, and their
 "ministers, done to great numbers of the king's subjects, by means of
 "returning the names of such persons as, for the singular advantage of
 "the sheriffs and their ministers, would be willfully foresworn; by rea-
 "son whereof many substantial persons, the king's true subjects, had
 "been wrongfully indicted of divers felonies, and other misbehaviour,
 "by their notorious falsehoods." It is thereupon enacted that all pan-
 nels to be returned, which be not at the particular suit of any party,
 shall be reformed, by putting to, and taking out, the names which so be
 impaneled by every sheriff and their ministers, by the discretion of the
 said justices before whom the pannels shall be returned [t]. By which
 provisions, sufficient care is taken that the grand juries shall consist of per-
 sons fit for that trust.

It is true, that in cases of misdemeanors, &c. which do not affect the
 life of the party, though the prosecution be only on the part of the crown,
 there is no necessity for an indictment to be found against him by a
 grand jury: it is sufficient that an information be made by the attorney
 general, or some other persons, in the crown office; who are often the
 more careful about the interest of the parties informed against, because
 they are sensible of the disadvantage they lie under in not having their
 case first considered by a grand jury.

It has been frequently alledged, that informations began in the reign
 of Henry VII. and are new things with respect to indictments, and lay
 the subject open to great grievances. But it is very clear that all the old
 statutes enact that proceedings shall be by presentment or indictment; and
 an information, filed in the crown office, is no more than a presentment;
 and persons informed against are not now, as they were formerly in the
 Star-chamber, liable to be condemned by a number of officers of the

[t] Formerly grand juries were returned by the sheriffs, at the suit of the crown; from whence great
 mischiefs and inconveniencies arose to the people, by false indictments, &c. Hawk. P. Crown, b. ii.
 p. 218. By 7 William III. ch. 9. indictments for treason must be made within three years after the crime
 was committed, except in the cases therein mentioned.

crown: they must be tried by a petty jury. I must add, that this advantage of having their case in capital matters first determined by a grand jury, belongs to peers in like manner as to commoners, unless in cases of an impeachment by the house of commons, which, representing the whole people of England, is considered as a grand inquest, and therefore there is no other in such impeachments for either peer or commoner.

AND when the bill of indictment has been found by the grand jury, there still remains, as I have already observed, another and more exact trial; in which the nobility, in all cases of treason, misprision of treason, felony, or misprision of felony [u], are tried by their peers; that is by those who have a seat and vote in the house of lords; and who, on account of their common honour, &c. will be disposed to shew all the equity and regard that can reasonably be desired. More especially this may be relied upon now, when the whole body of the nobility have a right to assist in the trial of each peer; the case might possibly have been different formerly, when the lord high steward, an officer appointed by the crown, had a right to appoint any of the peers who were thought most fit for the purpose, provided that there were above twelve in number; of whom a majority was sufficient to acquit or condemn. For then it might be possible to pitch upon such as were known to have some resentment or prejudice to the person accused, or to his cause, or be under the prejudice of party, which, even imperceptibly to the persons themselves, may warp the judgment [w]. And this was the more practicable, because the person accused could not challenge or set aside any of his peers.

THIS last circumstance indeed continues at present; but now, by 7 William III. cap. 3. sect. 10. when a peer or peers is to be tried, the whole body of the peers have a right to be summoned, with twenty

[u] In Lord Vaux's Case, Flemming chief justice said, that at the common law, in these four cases only a peer is to be tried by his peers: vid. Treason, felony, misprision of treason, and misprision of felony. See Bulstrode, p. 198.

[w] Cardinal Wolsey seems to have made an ill use of this power against the duke of Buckingham; for Rapin says, that though all the peers of the realm had a right to assist at the trial, there were present only one duke, one marquis, seven earls, and twelve barons; and it was generally believed that the cardinal had procured the majority against the duke. Hist. Eng. vol. i. p. 748. And the same author observes, that at the trial of Anna Bullen, though there were then fifty eight peers in England, yet only twenty-nine assisted at the judgment.

days notice, and, if they think fit, to sit and vote in the trial of each peer; and there must be a majority of those who are present either to condemn, or to acquit. To this trial by their peers every peer and peers of Great Britain has a right, except only in the cases of appeals of murder and of præmunire, in which cases they are to be tried by a jury of commoners.

COMMONERS in like manner are to be tried by a jury of their own rank; that is under the degree of peerage, but they must have all the following qualifications. First, They must be free and reputable subjects of England, not aliens, nor persons outlawed or attainted of any crime; nor infamous by having suffered the pillory or the like: but men of honest characters, and in the eye of the law good subjects, *probi et legales homines*. Secondly, They must be men of competent substance and ability. Their qualification, by 13 Edward I, was forty shillings per ann. estate; which was encreased to four pound per ann. by 27 Elizabeth, cap. 6. excepting, by 23 Henry VIII. cap. 13. trials of felons in corporations may be by freemen worth only forty pound in goods. But by 4 and 5 William III. ch. 9. all jurors in England, returned for trials of issues joined, or for any capital offence by 3 George II. ch. 8. s. 2. must have in their own name, or in trust for them, within the same county, ten pounds per ann. of freehold or copyhold lands, or lands in ancient demesne; and leaseholders of twenty pounds per ann. (besides the reserved rent upon the lease) whose leases run for five hundred years, or for one or more life or lives, are capable of being on juries. In London those that have lands, tenements, or personal estate, to the value of one hundred pounds; and by 4 George II. ch. 7. leaseholders in Middlesex must have improved rents to the amount of fifty pounds per ann. or more, to qualify them to sit on juries. Other cities, boroughs, and towns corporate are excepted from these acts, and the practice in them is to be according to custom. Jurymen in England must have five pounds per ann. and in Wales three pounds per ann. If they have less, it is a just cause of challenge. Thirdly, They must be of the same county wherein the fact was committed [x]. By 33 Henry VIII. ch. 23. in-

[x] Lord Coke relates the innumerable mischiefs and horrible vexations which arose when this ancient and fundamental law was laid aside, in many cases, by the 11 Henry VII. ch. 3. and a liberty given to proceed

deed it was enacted, that if a person examined, by any three or more of the king's council, confesses himself to be guilty of treason, misprision of treason, or murder, or be by them vehemently suspected to be guilty; that then the king, by commission under the great seal, may appoint persons to try such offences in the places limited by their commissions, by good and lawful men returned by the proper officer, in whatsoever other shire, or place, such offence was committed. And in this case no challenge for the county or hundred shall be allowed. But this statute, as far as it relates to treason within the realm, was repealed by 1 and 2 Philip and Mary, ch. 10. But, as to murder and misprision of treason, is thought to be still in force [y]. But such extraordinary commissions are seldom granted by the crown. Cases of murder are generally tried in the counties where the facts are committed, and by juries of the same. Now this must certainly be a very advantageous circumstance; in regard that neighbours may be most likely to know the truth of facts, and most likely to have a tender regard to the welfare of the party accused. Fourthly, They must be impartial, *i. e.* not biased by any affection or prejudice.

In order to prevent their being so, the law gives the party accused a liberty of making a challenge, or exception both to the array and to the polls [z]. A challenge to the array means an exception to the whole pannel, or list of jurors, in general, on account that the sheriff, or officer, who makes it, is of kin to one of the parties, or has made the pannel, or any part of it, upon the nomination of the party or his friends, or with a view to serve him, &c. In these or the like cases, the coroner is to make the pannel, or, if the coroner be also exceptionable, the court will order certain elisors to do it. In which last case no challenge can be made against the array [a]. But still there may be against the polls, *i. e.*

ceed without any indictment or presentment, by the verdict of twelve men, upon a bare information for the king; although the justices of assize and justices of peace were intrusted in it, to proceed according to their discretions upon bare proof by witnesses. See Coke's 4th Inst. p. 41. Though this liberty was given by act of parliament, yet the nation would not bear it, but was restless till that abominable act was repealed by the act 1 Henry VIII. cap. 6. and the trials by juries were thereby restored again. Sir Robert Atkyns on Chancery, p. 32. [y] Hawk. P. Crown, p. 404. b. ii. [z] Challengers to the poll, for cause, are many. They are gathered together by Lord Coke on Lyttelton, sect. 234. [a] Jacob's Law Dict. voc. CHALL.

against many persons who are put upon the pannel to be jurors. If ought can be alledged against any of these, that may give reasonable ground to suspect they are influenced either by affection, or by prejudice, the party, upon his trial, may alledge it as an exception, and, upon making it appear, that person excepted against will not be allowed to remain upon the jury. And besides these challenges, which the law allows to be made to the sheriff, or jurors, it further gives liberty to the party accused, in cases of high and petit treason, to challenge thirty-five, *i. e.* within one of three whole juries, without assigning any cause at all. And in like manner, in cases of felony, to challenge twenty, without shewing any cause. This it does, because there may possibly be instances when the party accused may know, or believe, some persons impannelled to have an ill will to him, and yet not be able to make it appear sufficiently to the court; and therefore, that all possible fairness may be used, and tenderness shewn, to the party accused, he is allowed to challenge the abovementioned numbers peremptorily, or without assigning any reason. By which means, it can hardly be that any of his known or suspected enemies can remain among the jurors. By this liberty of challenging, as I have observed, both the array and the polls, a man will generally be secure of an impartial and indifferent jury.

In this point therefore it may be justly remarked that we have an advantage which the subjects of some of the most famous republics of antiquity had not, even when they were at the height of their freedom [b]. "At Carthage, the order of judges had a very great power, chiefly because the same persons were perpetually in that charge. The estates, the reputation, and the lives, of all men, were at their disposal; and they did not use this excessive power with moderation." In Rome, as there were different orders of men, so when one of these orders, *i. e.* the knights, got the judicial power appropriated to themselves, they treated the others very unjustly. "The knights having, by the laws of Gracchus, got the power of judicature, proceeded cruelly against many of the most eminent and innocent persons: particularly they condemned Pub. Rutilius, the most excellent person not only of his own, but of any

[b] Livy, lib. xxxiii. cap. 46.

"other age, under the pretence of bribery, to the great grief of the whole city [c]." This was one of the greatest imperfections in the Roman republic: but the senators, and the knights, were much worse treated afterwards, when the emperors became absolute. Juvenal says,

"Quo cecidit sub crimine? quisnam

"Delator? quibus judiciis, quo teste probavit?

"Nil horum; verbosa et grandis epistola venit

"A Capreis [d]."

IN the Gothic constitutions, a remedy was wisely provided against suffering any hardships of this kind; by the appointment that every person should be judged by his peers. This was anciently so, even in France, as a very learned author says [e], and very much approves it: "Our ancestors," says he, "had great reason to desire to be judged by their peers." Mezeray says the same thing. "The great men were called princes; and we may perceive, in the darkness of those times, that it was not in the power of the king to deprive them of their estates or to put them to death, but by certain forms, and with the judgment of their peers and equals, in which judgment he presided, or by the judgment of the general assemblies [f]." But 'tis a long time since this constitution hath been over-ruled by the court of France whenever it has thought fit; it does not allow the peers of France, or even the princes of the blood, to be tried by the parliament at large, but by commissioners appointed by the king for that purpose [g]. And what view the court had in so doing, was intimated in a smart answer made to Francis I. when that prince expressed some wonder how the *Sieur Montaigne* came to be condemned, since his case was so good as that he had afterwards ample justice done to his memory; "The process of the *Sieur Montaigne*," says one who stood by, "was not made by judges, but only by commissioners:" as if he would say, in his blunt language that such commissioners, appointed at the pleasure of a minister, who was then in the height of his power, were not so conscientious in their judgments as other good judges usually are. And indeed the case of *Grandier*, in the reign of

[c] Velleius Paterc. lib. ii.

[d] Juv. Sat. x. p. 67.

[e] C. Boullainvill. tom. i. p. 26.

[f] Mezeray, Abr. tom. i. p. 183.

[g] The prince of Condé was tried by commissioners in

Francis the Second's time; and the Guises, who then ruled all, would have caused the sentence to be put in execution, if Francis had not died unexpectedly.

Lewis XIII, was a remarkable instance how commissioners may be chosen, by a prime minister, for the ruin of the party accused. This person having drawn upon himself the resentment of Cardinal de Richelieu, that minister ordered him to be tried upon an accusation of bewitching the nuns of Loudon. Commissioners were appointed by royal letters patents for that purpose, “Tous veritablement gens de bien [h], mais
 “tous personnes credules, et par cette raison de credulité tous choisis par
 “les ennemis de Grandier.” Mr. Bayle, in his notes, says, “La remar-
 “que que Mr. Menage fait sur cela me paroît digne d’être copié. Il est
 “à remarquer, dit il, qu’il n’y a point d’innocence à l’épreuve des juges
 “qu’ on donne la choix des juges à l’accusateur, il fera bruler par des
 “juges Molinistes, tous les Evêques Jansenistes, et par les juges Jan-
 “senistes tous les Evêques Molinistes.” (l. xviii. d’Aout). These judges, “sur le deposition d’Astroth diable de l’ordre des seraphins, et
 “d’autres diables; c’est à dire, sur le deposition des religieuses qui se
 “disoient possédées par ces demons,” gave sentence that Grandier should be burnt alive; which was afterwards put into execution. Bayle adds that, “depuis la composition de cet article, on imprime en Holland l’his-
 “toire des diables de Loudon, et il paroît manifestement que la possession
 “pretendue de ces Ursulines fut une horrible machination contre la vie
 “de Grandier.” One sees from this example what a minister of state could do in influencing a judgment in France; and with how little reason it has been affirmed by an author, whose book is chiefly upon cases of magic, that justice in France is administered “avec plus belles formes qu’en tout
 “autre royaume.” This is so far from being true, that some kings of that nation have taken off great numbers of persons without any judicial process at all. Mathurellus, who was procureur to Henry III, makes no scruple of owning this [i]. And Count Boullainvilliers [k] says of the antient kings of France, of the first race, “Les rois faisoient souvent
 “mourir les gens par colere et precipitation, quelquefois par avarice, et
 “apres l’execution ils faisoient suivre le jugement de morte.” In particular the Count says of Lewis XI, that “ce malheureux prince, le plus

[h] Bayle’s Dict. art. de GRANDIER.

[i] Mathur. contr. Hottomanni Francogal. p. 106.

[k] Hist. Abr. p. 200.

“ habile de ceux de son tems, a fait mourir plus de quatre mille personnes
 “ sans forme de procès où noyé où passés aux oubliettes, où étouffés en
 “ des cachots [l].” And this author farther says, that “ Tristan, prévôt
 “ de son hotel, étoit le juge, le témoin, et l’exécuteur ; et lui souvent le
 “ spectateur injuste.” I do not find that the kings of Spain have been
 quite so cruel as this ; but several of them made no scruple to order per-
 sons to be killed without any form of justice. Out of a number of in-
 stances that might be given to this purpose, I shall only quote that of Phi-
 lip II, who caused one of his lords to be killed in the streets of Madrid,
 and his religious confessor made no scruple to defend practices of this sort.
 “ According to the best of my knowledge in the laws,” says he, “ a secu-
 “ lar prince, who hath such power over the lives of his subjects, as, for a
 “ just cause, and according to the forms of justice, to put them to death,
 “ may, having witnesses, put them to death without such forms. The or-
 “ ders and forms of justice being, for the most part, no parts of the law ;
 “ or at most they are things that may be dispensed with. But suppo-
 “ sing a king should be unjust, in not observing the forms of law, yet
 “ if one that is his subject shall, at his command, kill one who is his sub-
 “ ject likewise, he is not guilty ; being bound to believe that his prince
 “ had just cause to command it to be done : all the actions of sovereigns
 “ having the presumption of the law for their being just [m].” And even
 Cardinal Richelieu vindicated such sort of proceedings, with regard to any
 penalties less than death. “ Bien (says he) qu’au cours des affaires ordi-
 “ naires la justice requière une preuve autentique, il n’en est pas dèmême
 “ en celles qui concernent l’etat. Puisque en tels cas ce qui paroît par des
 “ conjectures pressantes doit quelquefois être tenu pour suffisamment de
 “ éclairci. Il faut en telles occasions commencer quelquefois par l’exè-
 “ cution, au lieu qu’ en toutes autres l’éclaircissement de droit par tè-
 “ moins, où par pieces irreprochables, est préalable à toutes choses [n].” A
 plain instance of this was the case of Raoul de Presle, who was imprisoned
 in the time of Lewis X, of France, only for fear he should give council
 to Marigny, whom the court was resolved to destroy ; and the impe-

[l] C. Boul. tom. iii. p. 498.
 Test. Polit. liv. ii. chap. 5. p. 30.

[m] Geddes, Tracts, vol. ii. p. 309.

[n] C. Richelieu,

tuosity of the king, on this occasion, was so great, that, without waiting for judgment to be pronounced against him, he confiscated his goods, and gave them to one of the court favorites: and afterwards, when De Presle's innocence was fully cleared, his widow and his children could not recover any part of his effects [o]. But we in England cannot think such arbitrary proceedings to be either necessary or expedient upon any views of policy, or justifiable in any cause. We think them, on the contrary, very dangerous: for an innocent man may be soon greatly injured in his fortunes and reputation, by the passion and violence of a minister of state; but may not be so easily restored to what he lost: Because it is usual for men to hate those they have injured, and to back one injury by others, rather than do them justice. We therefore reckon it a great happiness in our constitution, that it does not subject us to any injuries of this nature. There have indeed been instances, formerly in England, of persons condemned unheard. Mortimer was so in 4 Edward III; Cromwell earl of Essex, the Admiral Seymour, and several others, were so, in Henry the Eighth and Edward the Sixth's time, in parliament. But this has been long since totally laid aside. Persons of all ranks, after having been indicted by a grand jury, are sure of having a regular trial by a petty jury, of having the charge openly made against them, and in cases of treason, of having a copy of the indictment five days before their trial; so that they may know what they will be charged with, and be thereby the better prepared to defend themselves against it. To which end also, by 7 William and Mary, they have counsel allowed, at their own choice, who are to have free access to them; and are to keep their secrets, and not to be examined against them. This is one great point gained, and for want of which many of our ancestors suffered much. Henry I, by a law, took away the liberty of criminals having counsel to plead their case; and so it continued a great while, and, as Parsons observes, must have been the cause of a great deal of injustice. For though, as Lord Coke observes, the court ought to be counsel for the party accused, yet, when the judges were influenced by the crown, they often were not; but frequently the contrary, particularly in Sir Walter Raleigh's case. Think therefore what a great ad-

[o] C. Boul. vol. iii. p. 369.

vantage we have gained, by the statute of William III abovementioned, where persons indicted, even for high treason, have the liberty of counsel. —As to the evidence against a person upon trial; in the first place, there is no making him an evidence against himself by torture, nor by extrajudicial confession. This was not allowed indeed in the Roman republic, except upon slaves: it was thought, that freemen ought not to be subject to it. But as some of the Roman emperors employed it in case of all persons, even of the highest quality, so when the civil law came to obtain in Europe, princes, who then began to be arbitrary, brought this into use along with it. However, they met with some opposition in several nations; for in the states of Arragon, for instance, held in 1325, it was ordained for law, that no free man should be put to the rack. And in France, among the Grievances represented by the noblemen of Champagne to Lewis Hutin, successor to Philip the Fair, one was about their being put to the torture[p]. But at length the judicial use of torture was settled almost every where. In France, persons of the highest quality are liable to it. Witness the Sieur Montaigne, grand maitre de France (whose case I mentioned before), “On lui donna un effroyable
“torture, dans lequel il avoua tout ce qu’on voulut. Il fut decapité,
“et trois ans après son fils obtint le retablissement de sa memoire[q].” In Spain, Antonio Perez, who had been secretary of state, and chief favorite of Philip II, was also put to the most cruel tortures; upon which occasion, Father Salinas, a famous Franciscan preacher, in a sermon, in the king’s chapel, addressed himself to the courtiers in the following words: “Mortals, what is it that you are all mad and gaping
“after with open mouths! what! do not you see the danger you live
“in? do not you see it? do not you see those who were the other day
“on the pinnacle of favour, to-day on the rack, and persecuted cruelly
“for many years, and nobody knows for why[r]?” Even in Holland and Switzerland a man cannot be executed without confession; and to this end they employ torture: so that an innocent person is forced to accuse himself falsely.—In England, it is evident, that the use of torture was contrary to law, and regarded as an infamous practice, even in the antient Saxon constitution; for the great Alfred put one of his judges

[p] Count Boul. vol. iii. p. 79.

[q] Ibid. tom. iii. p. 430.

[r] Geddes, Tracts, vol. ii. p. 321.

to death, for condemning a person upon a confession drawn out by torture [s]. But in Henry the Sixth's time, there was an endeavour, by the duke of Exeter to introduce it here [t], from whence the rack in the Tower was called his daughter: and this practice obtained for a considerable time; for in the succeeding reigns, even in that of Queen Elizabeth, there are several instances of persons being tortured. Campian a Jesuit, in Elizabeth's reign, was put to the rack [u]. And in Collier's Ecclesiastical History, vol. ii. p. 591. there are instances of several others who were racked in her reign, particularly Francis Throgmorton, who was eldest son of John Throgmorton, justice of Chester. He was twice set upon the rack, in the Tower, upon being charged with an attempt to enlarge the queen of Scots. And in King Charles the First's time, upon Felton's refusing to discover who put him upon killing the duke of Buckingham, there was a proposal for racking him. The king ordered the judges to be consulted upon it; but they declared, that any kind of torture, to draw out confession, was contrary to the law of England. And Lord Coke says [w], "that there is no
 "one opinion in our books, or judicial records, that we have seen and
 "remember, for the maintenance of tortures or torments." Our law therefore has, in tenderness to the subjects, laid this method wholly aside, except in cases where the person accused refuses to plead. Then indeed he is exposed to paine fort et dure [x]. But this depending wholly upon his will, since he may avoid it by pleading and putting himself upon his country, the law cannot be charged with cruelty in that regard. If he will plead, he shall not be interrogated even upon oath, which is a kind of torture to the conscience. A man's own voluntary confession in some circumstances will not be allowed to be made use of against him; and if he be indicted of high treason, the king cannot, by his great seal, or word of mouth, give evidence that he is guilty, for that would be giving evidence in his own cause [y]. He shall be tried upon the evidence that appears, and this evidence, when it is of living persons, must be brought face to face; so that the accused person has a liberty of

[s] Bac. Gov. of England, p. 55.

[t] See Coke's 3d Inst. p. 34.

[u] Camd. Eliz. p. 476.

[w] Coke's 3d Inst. p. 35.

[x] The paine fort et dure is applicable even to a peer, if he refuses to plead before his peers. Hale's P. Crown, p. 319.

[y] See Hale's P. Crown, p. ii. 282.

questioning and cross examining them. This was formerly otherwise. “Depuis quelque tems, on avoit perdu la coutume de confronter les temoins aux accusez [z].” But the confronting of witnesses with the person accused was soon after provided for, by a statute of 6 Edward VI. ch. 11. The judge who presides, and gives directions in the trial, is by law to be of counsel with the prisoner, and indeed he was always so; but this did not prevent great hardships when the judge was against him, as Jefferies and others often were. Formerly the prisoner could have no other counsel in cases of treason (the duke of Norfolk, in Queen Elizabeth’s time, was denied it [a]). But at present he is intitled by law to that advantage of counsel, so that he can scarce miscarry for want of making as good a defence as his case will bear. When the case is summed up, the jury are to determine it, *i. e.* they are to judge of the facts upon which the merit of the case turns. How far such facts are criminal in law, they are indeed directed by the judges; but still they are at liberty whether they will be wholly governed by the judges opinions or not, for they give their verdict in general, so that though they think the facts to be sufficiently proved, yet if they do not think as the judges do that such facts are criminal, they need not bring in the parties guilty. The great Judge Lyttelton, in his Tenures, sect. 386. declares, that “if a jury will take upon them the knowledge of the law, upon the matter, they may.” Which is agreed to likewise by Lord Coke, in his Com. thereupon.” And Sir M. Hale [b] says, “that the jury are judges not only of the fact, but of the law.” And it seems highly probable to me, that, by law, the juries in all cases ought to be judges of the points of law, as well as of the fact; because originally the persons of the jury seem to have been in the nature of judges and to have sat upon the bench [c]. In the trial of a peer, the case is determined by a majority of the peers present; but in the case of commons, the verdict of the jury must be unanimous; and in order to induce them the sooner to agree in it, they are put into a room together without any provisions, so that it cannot be long before they must be forced to agree [d]. Now this necessity of the

[z] Rap. Edw. VI. vol. vi. p. 61.

[a] Camd. Eliz. p. 438.

[b] Hist. Law, p. 140.

[c] See Olaus Verelius in Hickes’s Dissertation, &c.

[d] The verdict in capital cases must be given

openly in court, Hale’s P. Crown, p. 267.

jury's being unanimous is a circumstance of great advantage on the side of mercy; for a single man, or a few, will seldom stand out so resolutely on the side of condemnation, as they will for the acquittal of one whom they believe to be innocent. Such a person may be, and sometimes has been, saved by one resolute jurymen [e]. There have been instances when a verdict has been taken for sufficient without the unanimous consent of all the twelve jurors [f]; but this has been by the direction of some arbitrary minister or judge, and has always, by the legislative authority, been condemned as illegal. No new trial is ever granted, in criminal cases, when the defendant is acquitted, if some fraud or trick be not proved in the case [g]. The jury are not now punishable for their verdict, whatever it be, in any criminal case. Formerly the court used to fine and imprison them, if they did not find people guilty. Empson, in Henry the Eighth's time, was tried and condemned for having, among other oppressive practices, imprisoned a jury, when they had acquitted a person charged with felony, whom he thought guilty, and obliged them to appear before the king's council, where they were severely fined. And Throckmorton's jury, in the reign of Queen Mary I, were severely fined by the queen's council, in the Star-chamber: their fines were set by the lord chancellor at a thousand pounds a piece, at least, and they were remanded to prison till further order was taken for their punishment. Soon afterwards, three of them were adjudged to pay two thousand pounds a piece, and the others, upon their submission, had their fines mitigated [h]. However, the imprisoning and fining a jury has always been deemed an oppressive act, and contrary to the laws of the land. This is the form of trial which probably our Saxon ancestors brought over hither with them; since we not only find some traces of it in their laws, before the Conquest, but still earlier, in the constitutions of other northern nations, among all whom somewhat of this nature seems to have had place. Among the Swedes, there was antiently a constitution like that of juries. But there the twelve men were assistants to the regius præfectus in judgment, and were inquisitors like our grand

[e] See a remarkable instance of this kind copied from Lord Chief Justice Anderson's Report, in the English liberties, p. 262. [f] Hale's P. C. part ii. p. 298. [g] Hawk. P. C. p. 442. b. ii.

[h] See Holinshed's Chron. p. 11. 21.

jury, as well as judges of the fact like our petty jury. The votes of seven out of twelve would be sufficient to condemn [i]. The first law we meet with for determining the number of jurors here in England to twelve was that of Ethelred I, above two hundred years before the Conquest. "In every hundred let there be a court, and let twelve antient freemen, together with the lord of the hundred, be sworn that they will not condemn the innocent, nor acquit the guilty [k]" In the superstition indeed of those ages, the *ordeals*, and frequently the combat, were preferred before it [l]: so that it was not much used for a great while [m]. But at length men came to be sensible of the excellency of this way of trial, and so it has continued in use ever since; and has been one of the great supports of our liberty: having preserved a great number of lives and fortunes, that would otherwise have been lost. Many instances to this purpose might be produced; but the thing is too plain to need more proof. So that when foreigners have spoke of this as a terrible judicature, and subject to great inconveniencies, they seem to have been ignorant of what it was. Mr. Rapin Thoyras, who could better judge, was of a different opinion: "Ce privilege (dit il) que les Anglois ont conservé jusque à ce jour est un des plus considerables dont une nation puisse jouir: il met les petits à couvert de la violence des grands, et de la passion ou du caprice du souverain même; comme on eu à vu diverses exemples en Angleterre [n]." I must here add that to this trial by jury every one has a claim, in time of peace, except those who are actually in military service, and thereby subject to martial law. Which law has always been in this nation under certain regulations: its proceedings more summary, and its punishments more rigorous, than the common law would allow in other cases. The nature of military service requires this. But yet this, antiently in the Saxon times, was not left to the arbitry of the general, but was made by parliament [o]; nor was it suffered to be executed upon any but in time of actual war: and therefore the judgment given against Edmund earl of Kent, at Pomfret, 15 Edward II, was reversed in parliament 1 Edward III, be-

[i] See Olaus Mag. p. 488.
in Bacon on Governm. part i. p. 55.
liament 3 Henry III.

[k] Tyrr. vol. i. Introd. p. 123.

[l] See about ordeal trials

[m] Lord Coke says, that ordeal trials were taken away by par-

[n] Rapin, tom. i. p. 516.

[o] Bacon on Governm. p. 40.

cause it was given by colour of martial law in time of peace [p]. However, in succeeding times, the crown assumed a power of extending the martial law to civil cases; for after the rebellion in 1537, 28 Henry VIII, the court ordered a captain of the rebels, and seventy other persons, to be hanged by the martial law [q]; and in the reign of Edward VI, we have an instance of a man condemned and hanged by a court martial [r]. In 1588, several popish, and other seditious books, having been brought into the realm, Queen Elizabeth published a proclamation against them, in which she forbade them to be dispersed, uttered, or kept; and commanded that offenders, in this point, should be proceeded against, by martial law, with all diligence and severity: and that none of her lieutenants, or deputy lieutenants, should for any such proceedings, by martial law, be any time hereafter impeached or prosecuted, any law or statute to the contrary in any wise notwithstanding [s]. And in the reign of Charles I, commissions for trial by martial law were issued by that prince, notwithstanding the violent remonstrances of the house of commons; and, by the petition of right, this practice was declared arbitrary and illegal [t]. However, notwithstanding all this, Kirk and others, in King James the Second's time, hanged up great numbers of poor people, without any form of trial. Now this martial law cannot be executed upon any but soldiers, in time of peace; and upon them only with certain limitations, and in virtue of an act of parliament that is renewed every year. And as all persons are thus secured from being found unjustly guilty, so if they should be so found, the punishments are not arbitrary. The king cannot grant the forfeiture of the lands or goods of the person accused before he is condemned, because this grant might cause the grantee to prosecute the culprit with more malice or vehemence [u]: neither can corporal judgment upon crimes be given against a man in his absence [w]. The judges cannot invent new punishments, nor add new circumstances of rigour: these are determined by law, as well as the crimes. The cases in which death is to be inflicted are all specified by known laws. The king can remit, in some cases, part

[p] Hale's Hist. Laws, p. 40.

[q] See Echard. Hist. vol. i.

[r] Stow's Survey Lond. p. 156.

[s] Strype's Ann. vol. iii. p. 570.

[t] See Rushw. vol. i. p. 570.

[u] See Coke's

2d Inst. p. 48.

[w] Trial par pais, p. 31.

T E M P O R A L L I B E R T Y.

311

of the rigour, but he cannot increase it. When Charles I would have had Felton's right hand cut off before his execution, the judges would not consent to it [x]. And when Henry VI, by his own authority, condemned De la Pole, duke of Suffolk, to banishment, the house of lords protested against it.

IMPRISONMENT for life, or banishment, cannot now be inflicted at all, but by act of parliament, or sentence of the courts of law [y]. The king cannot so much as oblige any person to accept an employment abroad, not even in Ireland. Under which pretence frequently persons in other countries have been banished. This was attempted in Sir Thomas Overbury's case: he was sent to the Tower, because he refused an embassy into Russia [z].

IN like manner as to fines, care is taken that they shall not be exorbitant. Where the party is to be amerced, though he be at misericordia domini regis, yet the amercement must be affirmed by the jury; and when he is to be fined ad voluntatem domini regis, yet this fine must be set by the judges [a]. The king himself cannot impose a fine upon any man, but it must be done judicially by his judges: and so it hath been resolved by all the judges in England [b]. But, salvo contentemento, says Mag. Chart. and because in several reigns this was violated in that point, reinforcemenes of it have been obtained at several times. 15 Edward III, the commons petitioned that many commissions, whereby sundry men have been fined by the commissioners outrageously, may be revoked. And in the seventeenth year of the same reign, they petitioned again, that excessive fines, set on the king's subjects by such as have leets, may be redressed; which the king readily consented to [c]. During the reigns of the Stuarts, many excessive fines were laid on persons, for very small offences, viz. Mr. Hamden, for a misdemeanor, in Charles the Second's time, was fined 40,000 /. and the earl of Devonshire, for caning Col. Culpepper, was fined 30,000 /. But the bill of rights, 1 William and Mary, put a stop to this arbitrary practice. In all offences finable at present, the imprisonment is to be only till the fine

[x] Rushw. Coll. part i. p. 640.

[y] Coke's 2d Inst. p. 47.

[z] Rushw. vol. ii. p. 435.

[a] Ibid. p. 508.

[b] Ibid. vol. i. p. 540.

[c] Cott. Abr. p. 32 and 40.

is paid. If the fine be tendered, there is to be no imprisonment at all [d]. Upon the whole, I think that, in criminal matters, a subject in England has as great security for his life and liberty as can reasonably be desired.

WITH regard to our property, we are also in a more advantageous condition than most other nations in Europe. We hold it in a free and almost independent manner. Those burthens incident to knight's service in capite, which were so heavy upon our ancestors, are now entirely abolished. The feudal services, and particularly that of knight's service in capite, were wisely contrived at first, and accommodated to the circumstances of those ages when it was introduced: and, among the Saxons, those services were easy enough; but after the Norman conquest, they were so far aggravated, as to become a real and heavy burthen: particularly, since the Norman conquest, was introduced that article of the the marriage of wards, &c. [e], which was justly accounted very injurious to the subject. From this branch of prerogative the king had it in his power to dispose of any heiress, whose estate was held of him, to what person he pleased. He was indeed to do it without disparagement to her. But this might be done, and yet no provision might be made for her real happiness in marriage.

THOSE great estates which often fall to heiresses were considered as the means of the crown's gratifying its needy dependants: this must have been a mortifying consideration to parents in regard to their daughters. Nor could they be much more at ease about their sons, whom they were to leave under age; for we find, in Henry the Third's reign, that the earl of Savoy came to the king's court, at London, and brought with him several young women from his own country to be married to the young noblemen that were the king's wards; which thing much disgusted the English [f]. The crown was intitled to the wardships of them, and as well to the profits of their estate, however great, for their education.

THIS revenue was usually granted to some favorite, who made the most of it: and to that end, frequently committed, or suffered, waft

[d] Trial par pais, p. 468.

[e] Kennet says, in his notes on the Hist. of Engl. vol. i. that the parliament in 7 Henry III, granted the king the wards and marriage of their heirs. But Lord Coke's Comp. Copyholder, p. 22. says that the use of wardships was on foot before Henry the Third's time.

[f] Brad. Hist. Engl. part iii. p. 598.

upon their lands. It is true, by some laws, provision was made against these damages, and remedy was given; but such as was hard to come at, and mostly insufficient [g]. And when the heir came of age, there was so much trouble in suing livery, so much danger in omitting any forms, and so many persons ready to take advantage on behalf of the crown, that scarcely any one could escape wholly clear of these bri-ers [h]. It must farther be noted, that there was hardly any estate of value but was incumbered with these inconveniencies, from tenure by knight's service to the crown. Because if there was ever so little a parcel of this tenure in an estate, that parcel subjected all the rest to these incumbrances; so that the gentry of England were terribly subject to be hampered in those ages. Empson and Dudley, in Henry the Seventh's reign, used to enthrall and charge the subjects lands with tenures in capite, by finding false offices, thereby to work upon them for wardships, premier feizins, and alienations, being the fruit of those tenures: refusing, upon diverse pretexts and delays, to admit men to traverse those false offices according to the law. Nay the king's wards, after they had accomplished their full age, could not be suffered to have livery of their lands, without paying excessive fines: they did also vex men with informations, about instructions upon scarce colourable pretences [i]. And the house of commons, in a petition to King James the First, desire, that, among other things, he would be pleased to grant an act of pardon, which shall extend not only to criminal offences, but also to the relief of old debts and duties, due to the crown before the first year of his majesty's reign, to the discharge of alienations without license, and misusing of liveries, and ouster le mains, before the first summons of this parliament: of concealed wardships, and not suing of liveries and ouster le mains, before the twelfth year of your majesty's reign. Which gracious favour would much comfort your good subjects, and ease them from vexation, with little loss or prejudice to your own profit [k].

At first, our ancestors could not alienate these knight's service in capite estates without license; by degrees, they got a liberty of doing that;

[g] See Coke's 2d Inst. p. 389. and Statute of Glocest. cap. 5.
Engl. part. i. p. 159.

[i] See Lord Bacon's Hist. Henry VII.

[h] See Bacon, Govern. of

[k] Rushw. Coll. vol. i. p. 43.

and though the crown made great difficulty of parting with the tenures of knight's service, and the court of wards, yet, at length, after the restoration, that point was gained, by giving the crown 100,000 *l.* per annum out of the excise.

At present, therefore, our gentry hold their lands only in fee socage, having few of them any thing to do with the crown; but are at liberty to marry their daughters to whom they will, to give what guardians they please to their sons, and in general to make what improvements they think proper, without apprehension of waste to be committed upon their estates.

As the manner of holding our property is thus advantageous, so the administration of justice, in case of any contest about it, is far better secured than it was formerly among our ancestors. For some reigns after the Conquest, there were great injustices practised, and difficulties put upon the recovery of right. Florence of Worcester says, that in William Rufus's time, "*omnis legum filuit justitia, causisque sub justitiâ positis*" "*sola in principibus imperabat pecunia.*" It was agreed between Earl John and Bishop Longchamp, in Richard the First's time, that no persons of the rank of noblemen or free tenants, should be disseized of their lands and goods at the pleasure of the justices, or king's ministers, but by the judgment of his court, according to the lawful custom of this kingdom, or the king's mandate.

This agreement shews evidently, that it had been the practice of the ministers to commit such wrongful violencies. In the year 1198, in the same reign, the clergy, having refused to grant the king five shillings upon each plow land, as the laity had done before, though this was assessed upon the laity without common assent; the king, in revenge, issued out a proclamation, that whoever injured a clergyman, in any thing, he should not be compelled by law to make him any satisfaction; but if a clergyman owed a layman any thing, he should be obliged to make him true payment [1]. And it was usual with the kings not only to do injustice themselves, but to deny remedy, in a legal way, against subjects, who had thus injured others. Even after the grant of Magna Charta, Henry III

[1] See Brad. Hist. Engl. vol. i. and Tyrrell's Richard I. p. 563.

forbad his chancellor to issue out any writs that might prove prejudicial to his brother Earl Richard, or to Richard earl of Glocester, Peter of Savoy, or any of the king's half brothers, which, says Matt. Paris very justly, was contrary to the law and peace of the kingdom [m].

EDWARD I, gave a writ to the abbot of St. Peterburg, setting forth, that now he might indeed, by his prerogative, hinder any one from suing the king's debtor to execution; but there is no appearance that he had any such power, but that it was an arbitrary protection; of which, in the time of Edward II, complaint was made by the commons, and redress obtained, except in particular instances. And in 2 Edward III, cap. 8. it is enacted, that no commandment, under the king's seal, shall disturb or delay justice. In 5 Edward III, it is enacted, that no justice shall defer or stay the execution of justice, neither for the great seal, letter, nor other commandment [n]. In 46 Edward III, the commons complained that of late the court of King's Bench had refused the people to search and to have exemplifications for evidence against the king, or to his disadvantage. Therefore they pray that any person whatsoever have leave to search the records, and have exemplifications, though it concerns the king, or any other. The king's answer was that it should be so [o].

As causes were often thus delayed by the king, so it was usual to give him fines and presents in money, and other things, for his permission to try certain causes. In the reign of Richard I, Willian de Latimer gave 100 shillings to have a trial at law with Galfrid de Valors, who had possessed himself of part of his park. And in the reign of King John, William de Stutevil gave 2000 marks *pro judicio habendo* about a barony, in controversy between him and William de Albany [p]. The men of Yarmouth against the men of Winchelsea, “*afferunt domino regis tres palfridos et sex asturias narenfes ad inquisitionem habendam per legales* [q].” In opposition to such practices the article of Magna Charta, *nulli negabimus aut vendemus justitiam*, was intended: which practice however continued in a great degree down to later times.

IN 8 Edward III, there was a petition presented to the king in parliament, that all men may have their writs out of chancery, for only the fees

[m] Ibid. Henry III. p. 973.

[n] Cott. Abr. p. 9.

[o] Sir Rob. Atk. p. 42.

[p] Brad. vol. i. p. 209.

[q] Hale's Hist. Law, p. 152.

of the great seal, and without any fine, according to the greater charter. The king's answer was, that such writs as be of course shall be so; and such as be of grace, the king will command the chancellor to be gracious [r]. Gardiner, in the time of Mary I, "refusoit tout justice dans la cour de la chancellerie à ceux qui ne vouloient pas s'engager à seconder les desseins de la reine [s]." And we are told by another author that this princess ordered her chief justice, that persons who had any suit or contest with the crown should have right done them as well as others; which evidently proves that the practice had commonly been otherwise, else there had been no occasion for such an answer [t]. Such oppressions were antiently the more in the favour of the crown, because it not only appointed the judges, with commissions only during pleasure, and so might influence them, as it often did, but also had in itself a great share of judicial authority. Bracton says [u], "rex, et non alius, debet judicare si solus ad id sufficere posset." And the same author says, that in civil causes, "si curia domini ei (i. e. tenenti) defecerit, transferri debet placitum ad comitatum, ut vicecomes rectum teneat: et sic a comitatu transferri poterit ad magnam curiam ex certa causa, si dominus rex voluerit et ibi terminari."

IN this Magna Curia, says Dugdale [w], which was within the king's palace, before him and such of his nobles as he pleased to associate with himself for that purpose, the justitiarius Angliæ seems to have presided. And this was the case, not only after the Norman conquest; but was in a good measure so even in the Saxon times. For though our industrious antiquary Madox was of opinion that there was no such curia regis, where the king administered justice in person, in the Saxon times [x], yet the contrary seems to appear from the laws of Canute the Great [y]; which allow the plaintiff an immediate appeal to the king, if the shire-gemote delayed this remedy above four court days. After Menev. de rebus gestis Alfredi, p. 69. ed. Oxon. says, "Studebat is [Alfredus] quod que in judiciis propter nobilium et ignobilium suorum utilitatem, qui

[r] Cott. Abr. p. 15.

[s] Rap. Hist. Marie I.

[t] See Holinsh. on Throckmorton's trial.

[u] Lib. iii. cap. 9. fol. 105.

[w] Orig. Juridic. p. 5.

[x] Mad. Hist. Exch. p. 63.

[y] Part ii. leg. 16. edit. Wilkins, 136.

“ sapissime in concionibus comitum et præpositorum pertinacissime inter
 “ se dissentiebant; ita ut pene nullus eorum, quicquid a comitibus et
 “ præpositis judicatum fuisset, verum esse concederet; qua pertinaci dis-
 “ sensione obstinatissime compulsi, regis subire judicium singuli suba-
 “ rabant.”

THE case was the same indeed, in this respect, in the other Gothic con-
 stitutions. Snorro Sturlonides [a] tells us, that “ rex Olaus summo
 “ mane surgere solebat, corporisque curâ habitâ liturgico interesse officio,
 “ quod matutinis celebrabatur horis; hinc in judicio pro tribunali sedendo
 “ lites dividere publicaue tractare negotia. Ad hoc judicium pauperes
 “ pariter dititesque, omnisque sexus et conditionis homines, provocare
 “ licebat.” Des Roches [b] tells us, that Eric IV, king of Denmark,
 about the year 1136, “ continua à donner ses soins au gouvernement de
 “ son royaume. Il rendoit la justice en personne.—Dans ce temps, la
 “ seule connoissance des affaires de peu de consequence étoit attribuée aux
 “ officiers municipaux des villes: mais, s’il se trouvoit quelque cause im-
 “ portante, elle étoit réservée au roi, qui la decidoit, et sa volonté servoit
 “ de loi dans les affaires douteuses.”

It was thus likewise in France; for Mezeray says [c], “ Le roi
 “ tenoit audience un jour toutes les semaines; on ne portoit devant lui
 “ que les causes des grands qui n’avoient point autre juge que lui, et
 “ celles sur quoy les envoyez ou les countes avoient denié de faire justice,
 “ où qu’ils avoient jugés contre la loi.” De Seyssel, archbishop of
 Marseilles, indeed observes that there was a parliament to limit the au-
 thority of the king of France in this respect; and, on that account, he
 much commends their constitution. “ La justice (says he) sans point de
 “ difficulté est plus autorisée en France, qu’en nulle autre pais de monde
 “ que l’on sache, à cause des parlements, qui ont été instituez principale-
 “ ment pour cette cause, et à cet fin, de refrener la puissance absolue dont
 “ voudroient user ses rois. Et si furent dès le commencement établis
 “ de si grandes personages, en tel nombre et avec tel puissance et pouvoir,
 “ que ses rois y ont, quant à la justice distributive, toujours esté subjects;
 “ tellement que l’on a justice à raison à l’encontre d’eux aussi bien que à

[a] Hist. Reg. Septentrionalium, p. 437.
 Abr. tom. i. p. 184.

[b] Hist. Denmark, tom. ii. p. 307.

[c] Mezeray

“ l'encontre des subjects en matieres civiles [d].” And this might possibly be designed to have been their original constitution in that kingdom; but the parliament of Paris, which is but the shadow of the antient great councils, never had this authority in controlement of the king's jurisdiction sufficiently established.

THE kings of that nation have frequently broke in upon it, and have asserted that they had a right so to do. Cardinal de Richelieu, at least, laid it down as a maxim that the parliament was to confine itself to cases between subjects and subjects, and not to meddle with those in which the crown was concerned. “ Je mets en avant (says he) que ne faut autre “ que restraindre les officiers de justice, et ne se meler que de la rendre aux sujets du roi, qui est la seule fin de leur establissement [e].” And since this time, the king's privy council has acquired a right of drawing before itself all cases whatsoever; “ Qu'on sache d'une maniere à n'en “ pouvoir douter (says Guillard Hist. de Council du Roi, p. 68.) que le “ conseil du roi n'a point d'autres bornes que l'étendue de son empire” And again he says, “ Personne ne peut dire que le conseil du roi ne puisse “ pas dans certaines occasions connoitre les affaires particuliers; les “ evoker à soi et les decider definitivement, sans les renvoyer à des juges “ ordinaires.” He owns indeed that there was an ordinance made at Blois, in 1579, and an edict in 1597, on occasion of the assembly of the nobles at Rouen, by which it was forbidden “ que les causes de partie à “ partie qui consistent en jurisdictions contentieuses fussent traitées au “ conseil privée, et ordonné qu'elles seroient renvoyées par devant les “ juges qui en devoient connoitre [f].” But the same author [g] tells us, that “ par un arret de conseil, de 8 Juillet 1661, le Roi Louis XIV, fait “ defences à toutes les compagnies souveraines de prendre connoissance des “ proces dont sa majesté aura retenue et reserve à la jugement de soi et à “ son conseil, à peine d'encourir son indignation.” Since which time the parliaments have never effectually, if at all, pretended to interpose in matters of that nature.

THINGS were likely to have come to the same pass here in England; for, as I observed before, the king had, by our original constitution, a

[d] De Seyssel, Monarchie de France, p. 10.
p. 79.

[g] Ibid. p. 66.

[e] Test. politique.

[f] Guillard, ibid.

great share of judicial authority, which he might use, when he pleased, very much to the oppression of his subjects. Lord Chief Justice Fortescue indeed affirms, that “*proprio ore nullus regum Angliæ judicia proferre usus est.*” And Lord Coke was of opinion, that the regal authority of judicature was so antiently committed and distributed by the king, to the several courts of judicature, that, in the times of Bracton and Britton, the king could not give judgment in person, or fine any one. But, from the passages before cited, it has appeared, that our Saxon kings did frequently try causes, and gave judgment in person; and that the Norman kings continued to do the same, or had a right so to do, appears from Gervase of Tilbury; who, speaking of the Exchequer, says, “*habet enim hoc commune cum ipsâ domini regis curia in quâ ipse in propriâ personâ jura decernit.*” And art. 13. assizæ factæ apud Clarend. in the reign of Henry II, it is said, “*nisi tam grandis sit querela quod non possit deduci sine domino rege, vel talis quam justitiæ ei reponent pro dubitatione suâ, vel ad illos qui in ejus loco erunt.*” Here the judges of the King’s Bench are evidently distinguished from the king’s person: and he is represented to have a judicial authority, in himself, distinct from them. Henry III sat and spoke in court, determined cases, as he travelled through the country; and even in person set amerciements on several persons [h]. And though, after the time of Edward I, our kings seem to have exerted their judicial power less and less, yet still they continued to retain a great deal of it, and to exert it, when they pleased, in several cases.

AND not only several of our kings, but even their privy councils, by the king’s authority, used to take upon them to judge in various causes, wherein private property was concerned; and that even in original causes, which naturally might have belonged to the ordinary courts of justice. This does very clearly appear by the complaint of the commons in parliament, 25 Edward III, petitioning that no man should be put to answer for his freehold before the king’s council, or before his ministers. To which petition the king readily agreed [i]. Again, 37 Edw. III. cap. 18. there was an act made against suggestions to the king, by which people

[h] Madox’s Hist. Excheq. p. 104.

[i] Cott. Abr. p. 74.

were frequently put out of their freeholds without due process at law. In 2 Richard II, the commons petitioned, that no man, by writ or otherwise, be forced to answer for his freehold before the council, but at common law. To which the king answered, that no man shall be forced to answer finally thereto, provided that all persons shall answer before the council for oppressions [k]. In 1 Henry IV, the commons again petitioned, that all personal actions between party and party may only be tried by order of the common law, and not otherwise. To which the king answered, that the statutes therefore provided shall be observed; except one party is so grand, and the other so poor, that he could not by that means have recompence [l]. By the answers given to the commons petitions, in this behalf, we see that our kings were unwilling to part with this judicial authority.

AND in fact they retained it in no small degree, and even had it, in some respects, augmented by those statutes in the reign of Henry VII and Henry VIII, which regulated the judicature of the Star-chamber-court, of the court of Requests, &c. In these courts, the privy council determined several matters in which property was concerned, and which would, in the ordinary course of law, have been determined by the courts in Westminster-hall. How much the nation found themselves aggrieved by these proceedings, we see in our histories from the reign of Henry VII, till the Star-chamber-court was given up by Charles I. It was an article objected to the duke of Somerset, in Edward the Sixth's reign, that, contrary to law, he held a court of Request in his house, and forced divers persons to answer there for their freehold and goods, and did determine of the same [m]. King James I frequently sat in the Star-chamber, and determined various cases [n]; and in the reign of Charles I, the proceedings of the Star-chamber were some of the things which drew the most odium upon that prince; and yet it was very difficult for the nation to get a remedy; because, as I have already observed, these authorities were not without some foundation in law, and were very advantageous to the support of the authority of the crown.

[k] Lambard's Arch. p. 122.
vol. ii. p. 189.

[l] Cott. Abridgment, p. 398.

[n] Rushw. Coll. vol. i.

[m] Burnet's Hist. Reformation.

BUT at length, in the sixteenth year of this prince's reign, the commons in parliament, taking advantage of the ill use that had been made of these authorities, by the ministers of the crown, and the distress of this prince's affairs, obliged him not only to give up the Star-chamber-court, but utterly to restrain the privy council from meddling in matters of property. So that now, instead of having our cases determined by a privy council, we have them tried before a jury of our fellow-freeholders, who are instructed, as to points of law, by judges, who have not only their places for life, and consequently need not be under the influence of the court, but are under the inspection of parliament; and, as judges, can take no fees. Moreover our juries, in civil matters, are now so regulated, that it is almost impossible for them to be corrupted; which is a point of the greatest advantage to the subjects.

THIS may not be so generally allowed with regard to the judicial authority of the house of peers, in the manner as it is exercised at present. For I know several gentlemen who are frequently expressing their dissatisfaction upon this head [o]. They think it hard that the whole property of the people of England should be subject to the decision of a body of men, who are of a different order, and have different interests, from the commoners. They will not allow that this was antiently the case; or, if it was, yet the lords being now very different, in several circumstances, from what they were then, they ought not to be any longer vested with the sole judicial power, but ought to have a number of commoners joined with them.

BUT, if I may take the liberty to give you my opinion upon matters of so great importance, I must profess that, upon the best inquiry I have been able to make, it appears to me, that the jurisdiction of the house of peers, in some cases, is of as great antiquity as any part of our constitution: and likewise of so great advantage, in some respects, to the whole constitution, that it ought to be maintained inviolate: as to its antiquity, it is plain from the feudal law, as it obtained among other nations, that the barons, or tenants in capite of the king to a certain value, were to be judged by their peers, in his court, both in criminal and in civil

[o] See Temple's Miscel. part iii. p. 83, 84, &c. See also the Case stated of the judicature of the peers in case of appeals, p. 61.

cases. And that appears to have been the case in England, from the various examples hereafter alledged. It is farther probable, that the peers were to be judges in all cases wherein the king was a party, if justice was not done in his courts; for Bracton and Fleta intimate this, and the Mirror de justice expressly says it. Not that the house of peers had any coercive jurisdiction over the king; our law books expressly say the contrary of this. The peers had only a directive jurisdiction: but to this our kings, of the best character, generally submitted; as we find by many instances in Ryley's Placita Parliamentaria, where many cases, in which Edward I and II were concerned, were determined; as well as other cases of lords and commons, which came before the lords originally, as well as by appeals.

SOME persons indeed have supposed, that all the lords had not a right to judge in these cases; but only those lords who were appointed by the king. It is true, there are several precedents in parliament, and some in book cases, which prove that an inferior kind of judicature has been exercised by the lords on writs of error. But, from the nature of our constitution and from the Placita Parliamentaria, in Edward the First's time, it seems that, in cases where the king or the lords were concerned, and even in all matters upon appeal, the right of judicature was vested in all the lords [p]: and the act of parliament 14 Edward III. cap. 5. is not repugnant thereto.

THE committee of lords there provided was indeed to have a commission and power from the king. The reason of which was, that the king is, in the supposition of the law, the head of that court, and therefore ought either to be present in person, or virtually by his commission to others [q]. And so in like manner, if any thing was to be done by the lords out of parliament, it might be necessary to have such a commission. But this does not prove any thing against the authority of the whole house to judge cases. On the contrary, it appears from this very statute, that the whole house had an authority superior to the lords committees. Agreeably to which, in the preamble of the statute of Elizabeth, for determining errors in the intervals of parliament, by a com-

[p] Ryley's Placita Parl. p. 304, 361, and 372.

[q] See Cott. Post.

mission from the queen, there is still room left for a recourse to the judgment of the whole house of lords, in parliament. So that the judicial authority of the whole house of lords is certainly an antient part of the constitution.

BUT whether this judicial authority of parliament was antiently vested in the house of lords alone, exclusive of the commons, hath been thought a point not quite so certain: our most eminent antiquarians have been of different judgments about it [r]. Some of them have thought that, this judicature being parliamentary, the commons are intitled to a share in it; and the rather, because their having formerly been included in the baronage, and having sat with the lords in one house [s], it could hardly be otherwise, but that they must have had a share in determining the cases then moved in parliament. And, indeed, as it is evident that the commons did join in judgments of attainder, passed in a legislative way, so there is also reason to think that they did sometimes concur with the lords in declaring the law; and even in making awards in particular cases, even of a civil nature. William de Septivant's case is an instance of it, and others quoted by Mr. Petyt. But this seems rather to have been practised by the consent of the lords, in those particular cases, in order to add greater weight to their own decisions, than because the commons had a strict right to concur in all such cases.

FOR though it be true, that many such as are now commoners were antiently a part of the baronage, and, as tenants in capite, were also members of the great Curia regis, yet it is also true that there was very antiently a distinction between the Greater and Lesser barons; and the right of judicature, in the Magna curia, seems to have been vested in the former only, with the king at their head; though the latter might sometimes be present when judgments were given by the former. I am sensible that Mr. Madox thought that this distinction between the Greater and the Lesser barons was frivolous, and made without reason, by Spelman and Selden; but he ought to have considered that those great antiquaries did not make this distinction themselves: they found it already made in Magna Charta. Selden thought it was made some little time before that

[r] See Cott. Posth. p. 349.

[s] Lex Parl. p. 54.

charter; but it seems to have been much more antient than that, as appears by Fitz-Stephen, and Gervase of Tilbury. And this distinction is of importance, because it seems that to those Greater barons, and not to the Less, the judgments in parliament always belonged of right. For it is certain, from the instances here given, that all the Greater barons had a right to be concerned in the judgment there given. But that the Lesser barons had not that right properly speaking, appears from Archbishop Becket's case, in the reign of Henry II. And it seems very probable also from hence, that the Lesser barons were not reckoned peers like the Greater barons.

IN what the difference between them consisted is not easy to say, but it seems to have been in their estates. But in whatsoever the difference consisted, these Greater barons were to have writs *figillatim*; the Lesser barons were to be summoned only by a general writ. And from hence too we may perceive why the house of commons, who came into the room of the smaller tenants in capite, stand uncovered, and have always done so, before the lords. Which they would not do now, if they had not always done so: for they have been always gaining ground, as to their rights and privileges. The commons never could give an oath in any matter which did not concern their own privileges; which shews they were not a court of judicature, and that judgment always belonged to the lords solely [t].

IN 4 Edward III, the lords are characterized as judges of parliament; which indeed the commons did not dispute, in Henry the Fourth's time, when that king and the lords declared, that judgment belonged solely to them; and this course hath been ever since observed. There are numerous instances in which the lords have judged in parliament, not only in the cases of their peers, and those where the king has been party, but in others also brought before them; and even in original cases [u].

BUT it is said that the lords are now upon a different foot from what they were then. For they then sat in virtue of their tenures by barony, which secured to them a competent estate; and when the estate failed, the barony ceased; or, at least, the right of sitting in parliament was suspended. So that the house of lords must always have been filled with

[t] See Case of Appeals, p. 18.

[u] Ibid.

persons of great or very considerable estates. This must be confessed to have been in some measure true. Tyrrel, in the life of Stephen, p. 228, tells us, that "Earl Hugh, brother to the earl of Leicester, being a loose careless man, was reduced to great poverty and from an earl fell to be a knight." The duke of Bedford, in Edward the Fourth's reign, was degraded for poverty and want of possessions to support his title. And William Lord Say and Seal, in the same reign, having been twice taken prisoner, and thereby necessitated to mortgage and dispose of the greatest part of his lands; thereby his barony became extinct, and none of the family were summoned to parliament for several descents, though they continued to use the title of lords till King James the First's reign [w], when by letters patent, obtained from that prince, the barony of Say and Seal was recognized to belong to that family.

BESIDES the descent of honour, a certain number of knight's fees ought also to descend for the maintenance thereof [x]. And it would have been desirable, that, when the custom of making lords by writ, and by patent, was introduced, this circumstance had been settled, that they must have an estate of such a value, in order to keep their seat in that house. This would really have been for the service of the crown, as well as for the dignity of the peers. But, the practice having been otherwise, for a long time past, an alteration of the constitution, in this point, is not practicable at present; and therefore what is now to be done, is to preserve, as much as possible, the dignity and influence of that house upon the present foot. And whoever judges truly of the interest of our constitution will be clearly of the opinion that a peerage is absolutely necessary, for several good purposes, especially [as a bank or screen to the crown. "If we had no peerage now upon the old constitution, yet we should be necessitated to make an artificial peerage, or senate, instead of it [y]."] Cromwell himself found it necessary to do so: and it is more so every day in proportion as the house of commons goes on gaining ground.

EVERY one therefore, who is no republican, ought to desire to support the dignity of the lords house as much as possible; and, to that purpose it is necessary, at present, that all the prerogatives of that house, and especially

[w] Dugd. Bar. vol. ii. p. 247.

[x] Elsyng of Parl. p. 54.

[y] Plato Rediv. p. 133.

the right of judicature, should be preserved entire; for, if this should be lost, they would find it impossible to preserve their dignity. If it should be supposed, that there are some young, unattentive, and unskilful persons, at all times among them; it is certainly true, on the other hand, that there are, and always have been, others of great knowledge and probity, who take care that there shall be no just ground for complaints, in their administration of justice. In fact, I do not find there have been many cases complained of; and probably this same care will always be taken, not only from their innate honour and probity, and regard to justice, but also because they know that the house of commons have their eyes open upon them; and that the commons will be likely to be supported by the people, in case the house of lords do any thing amiss. So that, upon the whole, the last resort could not easily be better placed; nor the judicial authority in general be much better administered.

THERE will be always some defects in all human constitutions; and some delays will be occasioned by multiplicity of suits, and adhering to antient forms, which artful and knavish men take advantage of: but there cannot be room for any great or numerous oppressions, or malversation in the rendering justice, while there is a house of commons, which, having no part of the judicature themselves, and being of such weight as they are, and must always be, will watch over the conduct of the judges, and all who are concerned in determining of the property of subjects. So that both the security of having justice done, as well as the manner of holding property, seems to be upon as good a foundation in England as in any country in Europe; and, indeed, upon as good as (considering all things) can well be expected in any community.

TRACT II.

Of the Right and Manner of Imposing Taxes ; and of the other Privileges of the Parliament.

SECTION I.

Of the Illegal Attempts of some of our antient Kings to levy Money without the Consent of Parliament.

AS the subjects of England are thus secured from having their estates wrongfully taken from them, by any proceeding at law, so they are likewise out of danger of being exhausted, by exorbitant taxes, at the will of the crown. It is true, we are subject to taxes as well as our neighbours ; and those taxes have, for some years past, been very great ; but the difference to our advantage is, that, in most other countries, impositions of money are now arbitrary, and assessed at the will of the prince only ; and therefore may sometimes be very oppressive : whereas our taxes, being laid by the consent of the whole nation, given by our representatives in parliament, can never be much, or, at least, not for any length of time, contrary to the real interest of the nation.

THIS privilege of not being subject to taxes, but by the consent of their representatives, was formerly common to most, if not to all the governments of the Gothic model ; which provided for the support of their princes, without their having need of this prerogative of taxing their subjects. At the first settling of these kingdoms, there were certain quantities of land reserved and assigned, to the several kings, for the maintenance of their estate and family, and for the common charges of their administration. Some of these lands were occupied by their villains, or other servants, and the product of them, or a great proportion of it, was rendered in kind. Their towns and cities were inhabited by people somewhat more free, than the occupiers of their farms ; but they were obliged to render either their manufactures, or other services, upon occasion, from themselves in particular, or were to contribute to the fee-farm-rents paid by the towns in general to the crown. But most
of

of the lands were held of the crown, by the nobility and gentry, by military service.

THE conditions of holding these lands were different, in different nations. In England, the first and second of these sorts of lands might, by law, be talliated in a reasonable way; that is, the occupiers of them, besides their constant rent, might have some payments in money assessed upon them, on extraordinary occasions, by the prerogative of the king. "They might be talliated as far as a tenth part, but not farther [a]." The third sort were liable to heriots upon the death of a tenant, to reliefs upon the entrance of a new one, to escuage, or the payment of a sum of money as equivalent for their tenants failure to perform their military service; and, in proportion to this failure, they were farther liable to occasional aids of money, for making the king's eldest son a knight, for marrying his eldest daughter, and for ransoming the king's person, when taken prisoner in war. And most of these sorts were liable to escheat to the crown, for want of issue in the possessors, or by forfeiture in the case of treason, felony, and other crimes.

THE kings had, besides these, some settled dues upon the administration of justice, for the grant of certain writs and processes under their seals. They had moreover some fines, or mulcts, in cases of crime or misdemeanor; and in the nations that bordered upon the sea, and in some others, they had some ancient dues, or customs, paid upon goods exported and imported. But more than these settled and duly paid, the kings could not legally levy any money upon their subjects, without their consent. Accordingly Monsieur de Comines said, very justly, that to raise money upon their subjects, at their pleasure, was a right, that neither the kings of France, nor any other prince in Europe, at that time had; and that they who represented them as having such a right, did them no real service, for it made all people unwilling to be under their government [b].

INDEED several of the ancient kings of France did, in fact, lay impositions upon their subjects, without their consent; but this was looked upon as illegal and tyrannical: and accordingly the states assembled at

[a] Hist. Excheq. p. 27.

[b] Is there any king or prince upon earth, who has power, besides his demesnes, and without the consent of the poor subject who is to pay it, to raise one penny but by tyrannical violence? Comines Mem. lib. p. 333.

Tours, A. D. 1483, under Charles VIII, represented it to that prince, as one branch of the natural liberty of France, that no taxes should be levied upon the people, without the consent of the three estates; to whom accordingly the best princes of that kingdom have often applied for that purpose [c].

THE case was much the same in Spain: from the best historians of that nation, we find, that the states of the kingdom had an authority of regulating the public impositions, and controlling their kings, whenever they carried them too far. They acquaint us with the particular times when the standing taxes were first imposed; and give us instances when the grants of these taxes have sometimes been refused, upon the application of their kings. Mariana tells us, lib. xi. cap. 16. that, in the year A. D. 1176, Alphonfus, king of Castile, wanting money to carry on the siege of Cuenca, attempted to lay a tax upon the estates of the nobility and gentry; but they opposed him so vigorously that he was obliged to desist. And we have a very particular account, from the same author, that, when these grants were made by the states, they were made at first, only for a time limited. And that, though afterwards, by the negligence and want of caution, on the part of the states, they came to be granted without any determined time or proportion; yet still, in the time of Charles V, the states assembled in the several provinces, when that prince first came to the throne, made no small difficulty in granting the taxes demanded by him, and insisted upon their right to refuse them, whenever they thought fit [d].

FROM these, and many other passages that might be referred to, it is plain, that, even in Castile, where the power of the crown was always higher than in most of the other provinces of Spain, the right of laying extraordinary taxes was understood to belong to the states of that kingdom, and was long exercised accordingly: as it was likewise for some time since in France. But all the claims and endeavours in these

[c] Bodinus de Rep. lib. vi. cap. 11. and Pasquier, Recherches, lib. ii. cap. 6, 7. shew that in France the antient law was, that no money should be raised without the consent of the states; and how the practice came to be otherwise, Pasquier shews at large. And De Comines, lib. vi. chap. 7. p. 382. says, that Charles VII was the first that gained that point of laying taxes upon the country at his pleasure; without the consent of the states of his kingdom.

[d] See Geddes's Tracts, vol. i. p. 238. 253.

nations to preserve this right, in the great councils of their representatives, have been vain.

A LATE writer [e] says of the two kingdoms of Castile, that, “pour réduire (the people in them) à tout ce qu'on souhaite, il suffit de dire, “Le roy le veut. C'est sous son nom qu'on accable ces pauvres gens d'imposts; à legard des autres royaumes où provinces, ils n'en ont pas; tant ils en vantent la plupart d'être libres, et de ne payer la plupart que ce qu'ils veulent.” This writer seems to intimate, that the boasts of those other provinces, as to their freedom in this point, are not very well grounded: and I believe, indeed, the appearance of freedom, in their case, is more than the substance.

BUT there is reason to wonder how a native of France could make these observations, without reflecting, at the same time, upon the condition of that country; which is certainly as bad, as to taxes; and the authority of the crown, to impose them, is as absolute as it is in Spain. In a great part of France, there is not so much as a pretence of consulting the estates upon this subject: and though in some provinces of that kingdom, there is a form of the estates meeting, and the taxes they raise are called their free-gift, yet, for a considerable time past, they have been obliged to comply to give what tax the court demands, and so are reduced to a condition very little better than the rest of the kingdom [f]. The registering the royal edict for giving money, though it is done by the parliament of Paris, yet it is done only for form: they seldom oppose, and never with any effect. And of late years, when some of the estates of that kingdom have refused to comply with the demands of the court, they have been taught obedience, by a party of dragoons. Such melancholy changes have been made in the condition of these two great monarchies. The like observations might be made of one of the kingdoms of the north at present; and Sweden, the other of them, is but lately recovered from circumstances altogether as bad.

[e] Voyage d'Espagne.

[f] C. Boullain. Etat de la France, vol. ii. p. 62. says of the estates of Britany, “Le premier commissaire (du roy) fait au nom du roy, la demande du son gratuit: les commissaires se retirent aussi-tôt pour donner lieu à la délibération, qui étoit autrefois assez longue, mais à présent les etats s'accordent toujours unanimement, sans même que le corps fassent aucune délibération particulière ou générale.”

It hath not been without great difficulty and struggle, that the people of England have all along preserved this valuable branch of liberty. After having been enjoyed, in the time of the Saxon kings [g], in as great measure as the disturbed, unsettled condition of those times would allow, at the Norman conquest, or soon after, it was grievously attacked, and almost wholly lost: it is true that William of Normandy, by a charter, in the latter part of his reign, granted, that all the freemen of this kingdom might have, and hold, their lands free, and in peace, from all unjust exactions and tallage, so as nothing be exacted or taken, unless their free service, which of right they ought, and are bound, to perform, as it was appointed, given, and granted to them, by him, in the common council of the whole kingdom.

By this charter, they had, in reality, a right to be exempted from all but the known legal payments abovementioned, towards making the king's eldest son a knight, and towards marrying his eldest daughter, the reasonable talliages of his cities and towns in burgage tenure, the settled customs on merchandizes exported and imported, and such other extraordinary taxes as should be levied by their own consent. But both this prince, and several of his successors, practised very differently from the tenour of this grant: they revived and levied the danegild or hidage, and other taxes, which Edward the Confessor [h] had totally laid aside, in a most arbitrary manner, and in too high proportions, by their own bare authority, or with only the advice of their privy council. They talliated their demesne lands, and their towns, in a grievous manner, and contrary to the antient laws and customs of the land; and exacted high and uncertain reliefs for the lands held of them by military service, at least for baronies [i]. They made undue advantages of the wardships, and marriages of their wards, both male and female: though Henry II declared, that he would not take any thing for the marriage of his female wards; yet this was afterwards practised by his successors. As Magna Charta only obliged them not to disparage their wards in mar-

[g] In the Saxon government, before the Norman conquest, extraordinary taxes could not legally be raised, by the kings, without the consent of their witenagemotes, as we find by the Saxon annals, under the years 994. 1002. 1006. 1011. [h] Ingulph. Hist. p. 897. [i] About reliefs of earldoms, baronies, and knight's service, and the uncertainty of the same; see Selden's Tit. of Honour, p. 699.

riage, they thought themselves at liberty to make all other advantages they could from thence: a construction so agreeable to the times, that it was immediately countenanced, and in effect established, by the statute of Merton, cap. 6, 7. They made, or suffered, great wastes upon their lands; and by their sheriffs, bailiffs, and other officers, they extorted great sums of money upon those who held any thing of the crown, or were to make any payments to it: in particular they oppressed those whose lands adjoined to, or lay in the compass of their forests [k].

THESE oppressions were practised here for somewhat more than a hundred years after the conquest; and put the nation into so much ill humour, that it was ready to break out continually, and at last did so, in the reign of King John, who, to these oppressions, added other personal injuries, by corrupting the wives and daughters of divers of his subjects: so that the nation, resolving to bear with them no longer, had recourse to arms, in vindication of their liberties, especially their original right of being taxed only by their own consent, or in a legal way.

THE far greater part of the barons, supported by the generality of the people, being engaged in this enterprize, King John, seeing it would be in vain to oppose, agreed upon (A. D. 1215), and granted the following very important articles, among others, in the Great charter [l].

THAT the reliefs, for lands held of the king, by knights service in chief, should be certain, and according to the antient rate [m]. That lands in wardship should be kept without waste. That no scutage or aid
 “ ponatur in regno nostro, nisi per commune consilium regni nostri, nisi
 “ ad corpus nostrum redimendum, et ad primogenitum filium nostrum
 “ militem faciendum, et ad filium nostrum primogenitum semel maritan-
 “ dum; et ad hoc non fiet nisi rationabile auxilium [n]. Præterea volu-
 “ mus et concedimus quod omnes aliæ civitates, et burghi, et villæ, et ba-
 “ rones de quinque portubus, et omnes portus, habeant omnes libertates
 “ et omnes liberas consuetudines suas. Et ad habendum commune confi-

[k] See Charta de Foresta.

[l] Matt. Paris, p. 244. says, that the Great charter was, for the most part, declaratory of the principal grounds of the fundamental laws of England.

[m] Wilkins, LL. p. 368.

[n] Ibid. p. 369. Sir Robert Cotton, apud Royal Treas. pref. p. 14. says, that scutage, or escutage, was an imposition not mentioned before the reign of Henry I, and continued till Richard II. It was paid out of each knight's fee, as a sort of a fine for defect of service, or one settled in lieu of service, or in the way of tax to supply the king's occasions.

“lium regni, de auxiliis assidendis; aliter quam in tribus casibus prædictis
 “et de scutagiis assidendis, summoneri faciemus archiepiscopos, episcopos,
 “abbates, comites, et majores barones regni figillatim, per literas nostras.
 “Et præterea faciemus summoneri in generali, per vice-comites, et balli-
 “vos nostros, omnes illos qui in capite de nobis tenent &c.” These and
 all the other articles of the great charter, and that of the forest, which had
 been granted by King John, Henry III, his son, confirmed, in the ninth
 year of his reign.

SOME time afterwards, indeed, Henry III, by the ill council of Hu-
 bert de Burg, pretended that these charters had been obtained by duresse,
 and therefore cancelled them, in the eleventh or twelfth year of his reign.
 And even when he was prevailed with, after the battle of Evesham, to re-
 grant charters of the like nature, yet the clause in King John's Magna
 Charta, that no aids should be granted but by the common council of the
 kingdom, and several other clauses of importance, were omitted; accord-
 ingly the old aids were revived, and taken probably with circumstances
 not a little oppressive. As they also continued to be by Edward I, who
 not only tallaged his demesnes very heavily, by commissioners of his own,
 but also required military service of persons from whom it was due [o].
 He obliged the ports to arm more vessels, and send them into his service;
 and for longer times, and on other conditions, than they were obliged to
 do by their tenures, or by law; and took great quantities of provisions
 without paying for them [p]. And laid high impositions, by his own au-
 thority, upon the exportation of the chief commodities of the realm [q].

BUT the spirit of liberty, which had been stunned at the Norman con-
 quest, having been by this time revived, it appeared with great vigour in
 opposition to these arbitrary practices. The earl of Hertford, constable
 of England, and the earl of Norfolk, earl marshall, made strong remon-
 strances to the king about these grievances: and when he was gone into
 Flanders, without having redressed them [r], those earls, with other ba-
 rons, came to the Exchequer [s], attended by many of the citizens of
 London, whom, as Walsingham says (p. 72.) they prevailed upon to

[o] See Brady's Edward I, p. 52.

[p] Ibid. p. 54.

[q] Cotton's Posth. p. 182.

[r] Brady's Edward, I. p. 57, 58.

[s] Matt. Westm. p. 430.

stand by them for the recovery of their liberties; and forebad the barons of the Exchequer to levy the eighth penny upon the laity, telling them that they knew nothing of it, and that taxes could not be imposed, or exacted, without their consent.

Not long after which, these earls came to London, upon summons from Prince Edward, guardian of the realm, to meet in parliament [t], but they came guarded with five hundred horse, and a great number of choice foot, and would not enter the city before they had liberty to place their own guards at every gate: in which parliament they insisted upon, and obtained, the charter, since called the statute *De tallagio non concedendo* [u]. In this charter or statute, the Great charter and that of the forest are confirmed, and to be held as common law. It is declared (conf. Chart. chap. 5.) that the aids, mises, and prises, that had been taken, should not be drawn into custom [w]. And chap. 6. that no such aids shall be any more taken, “sans de commun assent de tout le royaume, et pour le commun profit de ces; faves les anciens aides et prises dues et accoustumes.” chap. 7. the maltot of wools is abolished; and it is granted for the king and his heirs, “que mes ces ne prendrons sans leur commun assent, et leur bon volonté. Sauve à nous et à nous heirs la custome des leyns, pealx, quires avaunt grauntes per la communalty avant dit.”

AND in the statute *De tallagio non concedendo*, cap. i. it is said, “Nullum Tallagium vel auxilium per nos, vel hæredes nostros, in regno nostro ponatur seu levetur, sine voluntate et assensu archiepiscoporum, episcoporum, comitum, baronum, militum, burgensium, et aliorum liberorum comm. de regno nostro. Cap. 2. nullus minister noster vel hæredum nostrorum capiat blada, corea aut aliqua alia bona cujuscunque sine voluntate et assensu illius cujus fuerint bona. Cap. 3. nihil capiat de cætero nomine vel occasione maletot de sacco lanæ.” Cap. 5. there is a pardon to Humphrey de Bohun, earl of Hertfort, and to Roger Bigot, earl of Norfolk, and to their confederates, of the transgression which they have done, if they have done any, before the making of this charter.

THESE statutes might have seemed strong enough to have effectually established the nation's right of not being taxed, but by parliament. But

[t] H. Knighton, col. 2523.

[u] Coke's 2d Inst. p. 432. Prynne, *Jof Pap. Usurp.* p. 742. 747.

[w] See Coke's Comment upon it, p. 528.

still attempts, either open or covert, were for some time made against it. Hakewill of Impof. p. 51. fays, that there was no practice or means, that by the policy of man could be thought of, but was attempted by Edward III, in order to bring the people under this yoke of impositions, without assent of parliament. At one time that prince agreed with the merchants, that they should pay him a certain sum upon each commodity exported and imported, by way of increase of custom: hereupon the commons complained, by petition 22 Edward III, that the merchants had granted to the king 40 s. upon each sack of wool, en charge du people, et nemy des merchants. But of a practice of this kind the commons complained before [x], saying it was a great mischief, and against reason, that they should be obliged to pay dearer for commodities, by reason of a charge upon them, by the grant of the merchants [y]. And by a statute 36 Edward III. cap. 11. no subsidy, or charge, is to be granted to the king, by the merchants, without assent of parliament [z].

SOMETIMES Edward III raised money by dispensing with some statutes in force, which restrained the exporting or importing commodities. But 13 Edward III. N^o 5. this was complained of in parliament [a]. And 14 Edward III. cap. 21. there was an act of parliament against it. In farther prevention of this mischief, which continued, there was provision made in an act of parliament 27 Edward III, against all licenses to transport wool [b]. Another devise for raising impositions, without the assent of the commons in parliament, practised by Edward III, was, by way of ordinance, *i. e.* by the king and lords, without the commons. In this way it was ordained, 7 Edward III, that the merchants should yield a subsidy to the king. But this was no sooner laid than revoked [c]. In 21 Edward III, the king, in excuse of such impositions, saith, that they were laid in times of great necessity, and by the assent of the prelates, earls, barons, and other great men, and some of the commons then present: nevertheless his pleasure was, that such impositions, not duly laid, should not be drawn into consequence, but taken away [d]. Sometimes he directly made impositions by his own authority, without

[x] Rot. Parl. 17 Edw. III. N^o 27. Cott. Abr. p. 39. [y] Hakewill, Imp. p. 52. [z] St. John's Arg. in Ruslaw. vol. i. p. 501. [a] Hakewill, p. 54. [b] Ibid. p. 55. 60. [c] Ibid. p. 62, 63. [d] Rot. Parl. 21 Edw. III. N^o 17. Cott. Abr. p. 53. 60.

colouring ; but this was complained of in parliament, in 23 Edw. III [e] ; and in 24 Edward III, that prince ordained that some extraordinary duties should be laid upon wool, for protection of trade against the enemies. But of this also there were, very soon, complaints made in parliament.

IN 50 Edward III. N° 163, a great complaint was made in parliament, that an imposition of a penny was made upon wools, for tonnage, over and above the antient due, which was but a penny. Also that a penny was exacted for mesonage ; which before was but a half penny : and although these impositions amounted but to one hundred pounds a year, yet they were as much stood upon, in point of right, as the other great one of forty shillings [f]. In the same year of this reign, Lord Latimer, chamberlain to the king, was censured in parliament, for procuring an imposition of eleven shillings to be set upon a sack of wool ; and, though he excused it by saying, that he had first the consent and good liking of the merchants, yet judgment was given against him, that he should be committed to prison. and fined and ransomed at the king's will, and be put out of the privy council. Richard Lyons, farmer of the customs in London, was, for the same cause, adjudged in parliament to be committed to prison, and all his lands and goods seized to the king's use.

BUT none of these devices, practised by Edward III, had any long effect : the nation easily saw through them. They perceived that an agreement with the merchants made the charge, in the end, fall upon those that were to buy the commodities : and besides, that granting licences to particular persons would be prejudicial to trade in general. They therefore opposed each of them in parliament, at the first opportunity, and had them made void by several statutes. Nor would they submit to the impositions which the lords only joined with the crown in making : nor even to those in which some of the commons were concerned. They insisted upon it, that no authority but that of the king, and the two houses of parliament together, was sufficient to charge the subject. Accordingly, after several struggles upon this matter, Edward III, though he was very unwilling to part with the power to raise

[e] Hakewill, p. 69.

[f] Petyt, Jus Parl. p. 385.

money, in this way, upon the subject, yet saw it was in vain to contend for it.

THE people would not submit even to the loans desired of them, whatever fair promises might be made of repaying them. The commons in parliament, 25 Edward III [g], made a grievous complaint against the use of them, and prayed that from thenceforth none shall be compelled to make loans against their will. And they gave the following reason in their petition: "For that it was against reason, and the franchise of the land: and prayed that restitution may be made to those that have made such loans." To this the king's answer was; "It pleaseth our lord the king that it be so."

IN 2 Richard II, it is enacted, that in loans, which the king shall require of his subjects, upon letters of privy seal, such as have reasonable cause of not lending, may thereto be relieved, without farther trouble or grief [h].

WHEN, in times of danger, the king sent writs to the ports, &c. to provide ships and men, they were commonly to be at the king's charge: but sometimes, upon necessity, they were to be at the charge of the towns and ports adjoining; which, I think, was the true cause of the complaint in parliament 25 Edward I, and the making the statute for staying that course; for there is no record of any such writ afterwards, till the time of Edward III. And then, in the 10th, 11th, 12th, and 13th of that prince's reign, by reason of the pressing wars between him and the French, there were writs awarded to the towns to send ships sufficiently furnished at their own charge: which, I think, were the principal cause of making the statute 14 Edward III. cap. 1. And after that, no such writ for ships, at the charge of the towns, was awarded till 1 Richard II. But that was grounded upon an ordinance in parliament, that all towns, which would have their liberties confirmed, should have them without fine, save only for finding a ship: so that this was, in some measure, at their will whether they would do it or not. Afterwards indeed, 1 Henry IV, there were commissions awarded to the towns to find vessels at their own charge: but this was com-

[g] Rot. Parl. N^o 16. Cott. Abr. p. 79.

[h] Cott. Abridg. p. 170.

plained of in parliament, 2 Henry IV, as being against the liberty of the subjects, and the commissions were expressly repealed; and since that time, no such writs have been issued.

AFTER the abovementioned censure in parliament upon Lord Latimer, 50 Edward III, on account of laying impositions, till 4 Mary I, no king did attempt to lay any more impositions without act of parliament [i]. Though it is also observable, that upon a joint application of the lords and commons to Edward III, in his 51st year [k], that they might not be taxed, or any way charged, but by their common assent in parliament, he answered, that he was not willing to do it without great necessity, and for the defence of the realm, and when he might do it with reason; which was a sort of asserting and keeping up his claim to do it upon occasion.

BUT, notwithstanding the abovementioned claim of Edward III, at the end of his reign, the nation continued, in parliament, to insist upon their right, and would not be charged with any imposition or subsidy, but by their own consent in parliament; and this they did with so much force and effect, that very little, if any thing, of that kind was practised, by the succeeding kings, for near two hundred years. During all that time, so careful was the nation to keep up a sense of its right, in this point, that several times, when the parliament granted money to be raised, by the customs or otherwise, they made protestations, that these supplies to the crown were not of duty, but free grant. And that this might plainly appear, they sometimes made suspensions, or interruptions, for a while, in the course of payment. In 5 Richard II, there was to be an interruption of the king's taking the subsidy, for a week, between the nativity and the circumcision [l]; and the like 9 Richard II. N^o 11. for above a month, from Midsummer to the first of August. In 13 Henry IV, the commons spoke their sentiments freely, and said they gave the subsidy to the king for a year, and should always do the same; but that they did expect that it should be confessed, that it proceeded from their own free will, and not from duty [m].

[i] See Coke's 2d Inst. p. 61. and Hakewill of Impos. p. 72. 78.

[k] See Rot. Parl. N^o 25.

[l] See Cott. Abr. p. 198, 199.

[m] See Cott. Abr. p. 478.

RICHARD II, in his 24th year, forced abundance of people to lend him money, which was one of the things that turned the trading part of the nation against him [n]. Edward IV first made use of a way, which he styled benevolence, though it really was no better than a compulsion upon the people, to give so much money to the king, in proportion to their substance [o]. And though this practice was declared illegal, by act of parliament, in the reign of Richard III, yet it was again revived and exercised with rigour by Henry VIII. This prince, in the 14th year of his reign, collected a benevolence, notwithstanding the statute of Richard III (which he affirmed to be of no force, as made by an usurper); it was ten in the hundred of all goods, according to the extremest rate of them, revealed by the oath of the possessors [p]. And in the 15th year of his reign, by the advice of Cardinal Wolsey, he sent commissioners into every county, to persuade the people to contribute to the king the sixth part of their whole estate. Upon which the people fell a cursing, and were upon the point to rebel, had not the king, by his letters, stayed the proceedings of the commissioners; though he threatened such as withstood his authority, with convention before his council, imprisonment, and confiscation of goods. When he saw that this method would not serve his turn, he demanded a benevolence; and, when that was refused, he abused his gold [q]. And although this prince, by rigorously pressing this point, occasioned an insurrection, which made him desist from it; yet in the reigns of both his daughters, Queen Mary and Queen Elizabeth, the same notions of the prerogative prevailed so much at court, that Queen Mary, by her own authority, laid impositions upon cloth and other goods; which, during her life, were submitted to, and paid without contradiction [r].

QUEEN Elizabeth did not only continue the same impositions that were laid by her sister Mary, but did raise others on sundry kinds of merchandize, by the same absolute power; namely, on every ton of sweet wines, on every ton of Rhenish wines, and on every quintal of alum; which, during the time of that prudent princess, when the nation

[n] Echard's Hist. Eng. vol. i. p. 405.
Posth. p. 177.
Impof. p. 71. in the Temple Library.

[o] See Raleigh's Prerog. Parl. p. 319.

[p] Cott.

[q] Hakewill's Impof. p. 99.

[r] Ibid. p. 93. 96. Sir John Davies of

was every day threatened with destruction and misery, were received without contradiction [s].

KING James I not only continued the impositions laid by Queen Mary and Queen Elizabeth, but also laid new impositions, over and above all customs and subsidies formerly due for the same: though the nation, during the greatest part of his reign, was at peace with all the neighbouring powers; and, except some little disturbances, which were occasioned by an uncommon stretch of the prerogative of the crown, enjoyed perfect tranquillity at home [t].

BUT the most express and avowed claim of right to this prerogative was in the reign of Charles I, who, set on by the duke of Buckingham, insisted that tonnage and poundage were due to the crown by hereditary right, without any grant from the subjects [u]; that he could justly, by his own authority, not only make impositions upon merchandizes, but also could, in cases of danger, of which he was the sole judge, oblige the maritime and even the inland counties, to find a proper number of ships, for the defence of the seas, or levy the sums of money upon them that should be requisite for the same purpose: as to all which points he obtained the opinions of most of the judges, after a solemn arguing of the case [w]. He also imposed coat and conduct money. But, in opposition to these practices, the house of commons made strong remonstrances, founded upon evident and antient facts. They shewed that tonnage and poundage, and even the customs, had been originally granted by parliament, first for a time, and afterwards for the life of the prince. Sir Robert Cotton says, that tonnage and poundage began 45 Edward III, and had their original by parliament [x]. And the greatest lawyers were of the opinion, that there was no custom due to the king by common law, not even the custom of wool, woollfells, and leather: this custom had its beginning by act of parliament [y]. That as to ship-money, though somewhat like it had been once or twice demanded formerly, yet the nation never submitted to it. For when

[s] Sir John Davies of Impof. p. 71. in the Temple Library. [t] See Davies of Impof. p. 73. Rapin, tom. vii. p. 141. 188. And see the judgment against Bates, Mich. 4 Jac. in the Exchequer Chamber, upon an imposition laid by King James I, upon currants, without assent of parliament, in Lane's Reports, fol. 28. [u] Rapin, tom. vii. p. 410. 527. [w] Ibid. p. 452. 457. and tom. viii. p. 25. [x] Posthu. p. 172. [y] Coke's 2d Inst. p. 59.

Henry IV, in the second year of his reign, ordered boats and ballingers to be provided at the expence of the towns, it was complained of in parliament [z].

INDEED it has been expressly declared in parliament, that the lords and commons cannot be charged with any thing for the defence of the realm, or the safe-guard of the sea, unless it be by their own will in parliament, *i. e.* in the grant of a subsidy. To which the king assented [a]. Upon the whole, they set forth that matter in so clear a light, that king Charles I, in his answer to the petition of right, found himself obliged to acknowledge, that the crown had no right to levy any money without the consent of the lords and commons in parliament.

BUT King James II, after all these declarations, took the customs, and chimney money, from the beginning of his reign, for a considerable time, without any act of parliament to authorize it. However, as that unhappy prince's behaviour gave occasion for a fresh declaration of rights, which was made 1 William and Mary, it is expressly declared, art. 4. "Que toute levée d'argent pour l'usage de la couronne sous pretexte de la prerogative royale, sans qu'elle ait été accordée par le parlement, ou pour un plus long temps, ou d'une autre maniere qu'elle a été accordée, est contraire aux loix [b]." Accordingly there never has been since, nor can be for the future, according to the present constitution, any pretension formed by the crown to the contrary: the parliament is uncontestably vested with the sole right of levying money.

AND this our lawyers understand, not only of actual impositions of taxes, but of all other methods that amount to the same thing; particularly, it is held for law, that the king cannot now raise, or diminish, the value of the coin, so as to endanger the property of the subjects, without their consent in parliament. A certain author [c] observes justly, that the coin of any nation can never be corrupted or embased, or, which is the same in effect, have a nominal value put upon it, higher than its true value, without great inconvenience. And that he had great reason for saying so, appears from the grievous experience which

[z] See Hamden's Trial.

[a] See Hale of Parl. p. 87. and Rot. Parl. 13 Henry III. No 10.

[b] See Rapin and Echard's Hist. Revol. p. 266.

[c] Bodin de Rep. p. 608.

France, his own country, has had of the effects of those arbitrary valuations. “ Les peuples, sous le regne de Philippe le Bel, avoient à souffrir d’extremes vexations. L’une de plus grandes fut le changement des monnoyes. On les avoit fait trop foibles de bas alloy, et de trop haute valeur. On les voulut rabaisser. La perte y étoit grande. Le peuple de Paris s’en mutina [d]; le mal dura sans amendement jusqu’en l’année 1306, et fut porté à tel excès, qu’en la premiere année du 14^e siècle, un denier de l’ancienne monnoye en valoit trois de la nouvelle: par où il paroît que le roi (Philippe le Bel) avoit réellement fait profit de deux parts sur trois par la nouvelle fabrique [e].” We have formerly had the same thing often practised in England. Henry I, A. D. 1125, “ mutavit subinde monetam, unde cara omnia; et gravissima secuta fames [f].” He was followed in this by Stephen, and others of his successors [g]. Henry III, in his 33d year, being in great want; borrowed large sums of money of his brother Richard earl of Cornwall, and coined new money in most cities and large towns, out of which he fully paid his brother, and gave him one half of the profits of the coinage, which made him vastly rich [h].

BUT one of the most remarkable alterations in the coin was made in Edward the Third’s reign, by William Edington bishop of Winchester, treasurer of England, who, loving the king’s commodity more than the wealth of the whole realm, caused new groats and half groats to be coined, less by 5s. in the pound than the sterling value; whereby victuals and merchandizes became dearer through the whole realm [i]. In A. D. 1411, Henry IV caused a new coin of nobles to be made, of less value than the old, by 4d. in the noble. And in the year 1465, Stow tells us, that Edward IV caused a new coin, both of gold and silver, to be made, by which he gained much: for he made of an old noble a royal: nevertheless, to the same royal was put 8d. of allay. And so of other coins, after the same proportion, to the great damage of the commons. Edward IV, in the 5th year of his reign, abased his gold; and in the year 1544, Henry VIII caused base money to be coined, such as pieces of 12d. 6d.

[d] Mezeray, Abr. tom. i. p. 496.

[e] C. Boul. tom. iii. p. 67. et ibid. p. 391, sous Philippe

Valois. [f] Spelm. Henry I. p. 308.

[g] Tyrr. in Stephen, p. 229.

[h] Kennet’s

Paroch. Antiq. quotes Wikes’s Chron. A. D. 1149.

[i] See Stow’s Survey of London.

4*d.* 2*d.* and 1*d.* in weight as the late sterling, and, in appearance, good silver, but inwardly copper [k]. This base money, for the time, caused the old sterling to be hoarded up; so that 2*l.*s. was frequently given for an old angel to guild withall [l]. Also land and tenements, with the prices of victuals, were raised far beyond the former value.

HENRY VIII abased his coin more than the one half of its value: such an abatement as never, before or since, was heard of, and could not but be very grievous to the people; but, because they held it lawful so to do, they made no complaint against it [m]. Indeed the practice of this prerogative hath not been forborn by any of the kings of this realm; and some of them have used it very immoderately: yet we do not find any one public complaint upon record against it, for the reasons abovementioned [n]. Several proclamations were issued out, in Edward the Sixth's reign, for sinking the value of the coin one third part, and sometimes one half [o]. And in Queen Mary's reign, A. D. 1556, a proclamation was issued out, for raising the currency of the testoons above their intrinsic value [p]. Queen Elizabeth, in the 44th year of her reign, altered and debased the Irish coin; which is greatly complained of by Mr. Camden. But the Mirror of justice says [q], that, according to the antient Saxon constitution, changes of this sort in the coin ought not to be made, without the assent of parliament; and Lord Coke was also of the same opinion [r].

BUT some of our lawyers, of those times and since, have been of the opinion, that the king, by virtue of the prerogative, might lawfully make such changes, and that he was the sole judge of the expediency of so doing. Sir Thomas Smith, in his treatise on the English Commonwealth, represents it to be the king's right, to put what value he pleases upon his coin. And Sir Robert Cotton says [s], that he was not of opinion, with the Mirror of justice, that the king cannot abase his coin without assent of parliament. Even Lord Chief Justice Hales says [t], "It is true, that the embasing of money, in point of allay, hath not been very frequently

[k] Hakewill of Impof. p. 85.

[l] See Fleetw. Chron. Pret.

[m] Hakewill of Impof. p. 91.

[n] Ibid. ibid.

[o] Strype's Eccl. Mem. vol. ii. p. 247.

[p] Strype's Eccl. Mem. vol. iii.

p. 311.

[q] Cap. 1. sect. 3.

[r] 2d Inst. p. 576.

[s] Possb. p. 189.

[t] Hist. Pleas of the crown, vol. i. p. 193.

“practised in England; and it would be a dishonour if it should: neither
 “is it safe to be attempted without parliamentary advice. But surely,
 “if we respect the right of the thing, it is in the king’s power to do it.”
 Now so far the opinion of these lawyers may be right, that, by our an-
 tient constitution, the executive power of fixing a value on the coin was
 solely vested in the king. For one of the Saxon laws says, “*nemo offi-*
 “*cinam aliquem monetariam habeat præter regem [u].*” Hence, there-
 fore, it is highly probable, that, by our antient constitution, the crown
 was trusted with the executive power of ascertaining the value of money.
 But then it was, on the other hand, undoubtedly intended, that the king
 should do it for the benefit, and not for the ruin, of his people. For
 it was always a maxim in law, as lord Coke says [w], that the law hath
 so admeasured the prerogative of the crown, that it cannot justly injure
 any one, unless its doing so may be for the public service. And therefore
 when Henry VIII and other kings embased their coin, greatly to the da-
 mage of the people, they acted arbitrarily and illegally; and the best of
 our kings thought so, consulted with their parliaments, and acted by their
 advice in this case.

Rot. Claus. 6 Henry III, dorso m. 14, there was an assize de monetâ
 made by commune concilium nostrum. Chronic. Thomas Wikes says,
 ad A. D. 1247, “*Facta est generalis congregatio omnium magnatum*
 “*Angliæ, episcoporum, comitum, baronum, coram domino rege apud*
 “*Oxon [x], quindenâ Paschæ, quorum consilio et assensu dominus rex*
 “*mutavit monetam suam, quia vetus sic fuit retonsa quod nullius fuit va-*
 “*loris. Prohibitio capiendi monetam retonsam.*” Pulton’s Statutes tell
 us, 51 Henry III, that by the consent of the whole realm of England, the
 weight of the money was determined. And the same author tells us, that
 in the statute called Articuli super chartas, 28 Edward I. cap. 20, several
 ordinances were made concerning the standard of gold and money, and
 to punish those that act contrary thereto. 2 Henry V. Rot. N°. 12, it is
 enacted, that the king, by his council, shall have power to make ordinan-
 ces touching the coin, to endure till next parliament [y].

[u] Wikes’s Chron. p. 118.

[w] 2d Inst. p. 36.

[x] Gale’s Scrip. xv. vol. ii. p. 47.

[y] Cott. Abridg. p. 539.

THE standard of money remained nearly the same in the kingdom, from 6 Edward IV, till A. D. 1524, in the reign of Henry VIII, who then first debased the money, by mixing it with brass, to the very great injury of the subjects, and no less disreputation of that prince [z]. But the late great work of remedying the ill state of the coin has taken away all pretence from the crown, of raising or lowering the value of our money, either in weight, fineness, or denomination [a].

As the crown cannot break in upon the property of the subjects, by raising or sinking the value of the coin, so neither can it do it by granting patents for monopolies [b]. Lord Coke defines a monopoly to be an institution by the king, by his grant or commission, or otherwise, to any person or corporation, of and for the sole buying, selling, making, working, or using of any thing, whereby any person or corporation, are sought to be restrained, of any freedom or liberty they had before, or hindered in their lawful trade. The like definition of monopolies is made in the preamble of act, 21 James I. cap. 3, concerning monopolies. Patents for such monopolies were formerly granted, by several of our kings; though they were of very ill consequence to trade, and oppressive to the subject. In the latter end of the reign of Edward III, John Peach, of London, purchased a patent, under the great seal, containing that he only might sell sweet wine within the franchises of the city of London; and, by the colour thereof, he took 4s. 4d. of every man, for every ton thereof sold [c]. But for this he was censured in parliament, 50 Edw. III [d]. And in 3 Richard II. No. 18, John Imperiali, an agent sent hither by the republic of Genoa, had procured a monopoly, to furnish England with all such wares as came from the Levant; and kept his staple for that purpose at Southampton: but he was killed, upon this account, by Kirby and Algar, two citizens of London [e].

RICHARD II, and others of our kings, granted licenses to some merchants, to transport goods to different parts from what were appointed by act of parliament; upon condition they should pay a sum of money for

[z] Strype's Annal. vol. i. p. 265. [a] Letter to W. Moyle, Esq; in his life, pref. to his 3d vol.

p. 24. [b] Generally all monopolies are against Magna Charta, because they are against the liberty of the subject, and the law of the land, Coke's 2d Inst. p. 47. 63. [c] Cott. Abr. p. 122.

[d] Ibid.

[e] Prynne's Lords, p. 369.

that liberty. To the merchants of Newcastle, Richard II gave leave to carry wool-fells, &c. to any port besides Calais, then by statute appointed for the staple town, on condition, that they should pay for them such custom and subsidy as should be thought reasonable by the king's council. And Henry VI, in his 6th, 21st, and 30th years, renewed the same licences; and granted 600 sacks of wool to a merchant of Florence, with a non obstante to any statute or restraint. In this reign such licences were so frequent, that the town of Calais complained, in parliament, of their decay thereby; but I do not find that it obtained any relief.

EVEN so late as the reign of Queen Elizabeth, there was great complaints of monopolies. "I cannot utter with my tongue, or conceive with my heart (says Sir Francis Moore, in the house of commons) what the town and county, for which I serve, suffereth by some of these monopolies. Monopolies bring the general profit into a private hand; and the end of all is beggary and bondage to the subject. Out of the spirit of humiliation I speak it, there is no act of her majesty's, that is more derogatory to her, more odious to the subject, and more dangerous to the commonwealth, than the granting these monopolies [f]." Mr. Dernland said, "If we proceed by way of petition, we cannot have a more gracious answer than we had the last parliament, about monopolies; but, since that time, we have heard of no reformation: I never heard the cry of monopolies greater or more vehement, than at present [g]."

NOTWITHSTANDING the distressed situation of a great part of the nation, by means of these monopolies, was so loudly complained of, the crown was by no means willing to suffer that part of its prerogative to be touched, or intrenched upon. The Lord Keeper Egerton said, in parliament, in 1597, that, as to monopolies, her majesty hoped, that her dutiful and loving subjects would not take away her prerogative, which is the principal flower of her garden; but that they will rather leave that to her disposition. As her majesty has already proceeded to the trial of them, so she promiseth to continue, that they shall all be examined to

[f] Dew's Journal, p. 645.

[g] Ibid. p. 646.

abide the trial, and true touchstone of the law. Some others of her counsellors spoke in a higher strain. "One gentleman, said Sir Robert Cecil, went about to possess us with the execution of a law in antient record, 5 and 7 Edward III, likely enough to be true, when the king was afraid of the subject. In former times all sat together, as well the king as the subject; and then it was no prejudice to his prerogative to have such a monopoly examined." If you stand upon the law, and dispute the prerogative, hear what Bracton says [h], "*Prærogativa nostram nemo audeat disputare*. I have heard myself, being in my coach, these words spoken aloud: 'God prosper those that further the overthrow of these monopolies: God send that the prerogative touch not our liberty.' I will not wrong any one so much as to imagine, that he was of this assembly; yet let me give you this note, that the times were never more disorderly, and men are too apt to make ill interpretations of good meanings: I think, that these persons would be glad that all sovereignty was converted into popularity." Sir Francis Bacon, in like manner, declared strongly, in the house of commons, upon this subject, that the commons ought not to deal, or judge of, or meddle with, her majesty's prerogative [i].

BUT, at length, the remonstrances and complaints of the house of commons had some effect. Queen Elizabeth, in her 44th year, published a proclamation, declaring those grants to be null and void, and leaving them to be tried at common law. And, in a speech to a committee of parliament, she said, "I would rather lose my heart or hand, than that either should consent to allow such privileges to engrossers, as may turn to the damage of my people [k]." Though still the crown went on to grant monopolies, as appears by several set on foot, in the time of James I, by the king's letters patents.

BUT, to put an end to all grievances of this kind, there was an act made against monopolies, 21 James I. chap. 3, by which it is declared, that all monopolies, &c. are altogether contrary to the laws of this realm; and so are, and shall be, utterly void, and of none effect; and in no wise to be put in use or execution. And that all such grants of mono-

[h] Dews, *ibid*, p. 649.

[i] *Ibid*. p. 645.

[k] Camden's Elizabeth, p. 642.

polies, &c. shall be ever hereafter tried according to the common laws of this realm, and not otherwise. The party grieved, by such grants or monopolies, shall recover treble damages and double costs, by action in the courts at Westminster. And whoever stays, or procures judgment to be stayed or delayed upon such actions, shall incur a præmunire. The crown can only grant exclusive patents, for fourteen years, to new manufactures and inventions.

By which statute, one should imagine, all such hindrances to trade, and such chargeable and oppressive vexations to the subjects, were effectually removed. But, in the reigns of Charles I and Charles II, were there not several patents granted, in the way of monopolies, equally detrimental to trade, and oppressive to the subject, with any of those heretofore so much complained of?

It is farther held, by our lawyers, that the crown hath not a right so much as to create any new offices, with salaries annexed to them to be paid by the people. This is a way of raising money that has been often practised in other countries of Europe: it has been done very much in France, and has brought in great sums of money to the crown. “*Les coffres de l'épargne étant vuides, il falloit avoir recourse au plus faciles moyens pour recouvrer de l'argent, particulièrement à la création de nouveaux offices, dont les Italiens fournissent les titres, et le roi, Henry III, de France, persuadoient que cette multiplication étoit un excellent moyen d'avoir de l'argent sans violenter personne, et de rendre la puissance du roi plus absolue en remplissant toutes les villes des creatures qui fussent à lui, et qu'il tint obligées, par la crainte de perdre leur charges, de lui aider à foulreleur, sujets [1].*”

THIS practice went the more easily down in France, because that people, as De Comines observes, love to be in office, but it is in its nature productive of many and great inconveniences; for it encourages extortion and many other kinds of outrages. And as it is, in effect, a way of raising money and burthening the subject, who must bear the charge of such officers, without their consent, in parliament, it hath not been submitted to in to in England, when attempted on the part of the crown.

[1] Mezeray, Henry III. vol. iii. p. 1130.

KING Edward III had granted to Robert Poley, of Norwich, a new office for measuring of worsteds, with a new fee; but it was at the petition of the commons, resolved, in parliament, to be void, and afterwards was revoked by the authority of parliament [m]; and the like is the law in all cases, says Lord Coke [n]. There was a petition, in parliament, to the like purpose 13 Henry IV [o]; where the commons complain that an office was erected for measuring of cloths and canvas, with a new fee for the same, by the authority of the king's letters patents, and pray that these letters patents might be revoked; for that the king could erect no offices with new fees to be taken of the people, who cannot legally be so charged but by parliament. The king's answer, in parliament, was, that the statutes heretofore provided, for this purpose, shall be observed: which statutes were 25 Edward I, and 34 Edward I, &c. and accordingly judgment was also given in the King Bench: so that this point was both resolved, in parliament, and adjudged by law, according to these statutes [p].

ACCORDINGLY, by 12 Car. II. cap. iv. sect. 7. it is enacted, that the customers, collectors, and all other his majesty's officers, in the several ports, concerned in the receipt of the customs, shall receive only such fees as were taken in 4 James I, until such time as the said fees shall be otherwise settled, by authority of parliament. And by 12 Car. II. cap. 32. 34. his majesty is authorized to nominate and appoint such, and so many commissioners, and subordinate officers, for the management of the excise, as he shall think proper: and by sect. 33. of the said act, all the said commissioners and officers are to be sworn to take no fee or reward, for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf. These provisions implied that, without parliament, no offices could be created by the crown, that would be either immediately, or in consequence, burthensome to the subjects.

[m] Cott. Abr. p. 71.

[n] 2d Inst. p. 534.

[o] Cott. Abr. p. 482.

[p] Lord Coke's 2d Inst. p. 533.

SECT. II.

Those Methods of Levying Money that were antiently deemed Legal, are, at present, abolished; and that Power, with the Disposition of the Money raised, is vested in the Parliament.

HAVING set forth some of the illegal methods, that many of our antient kings pursued, for the raising of money, by their own authority, without the assent of parliament, I shall proceed to point out some other practices, which they pursued for the same purpose, which were no less oppressive to the subject, though, in those days, they were deemed legal, and which, at present, we have happily got rid of. And herein I shall begin with *purveyance*, an oppression in former ages, so big that all other oppressions seemed to be swallowed up in that one. This was originally, without doubt, a legal right in the crown; being of a like nature with some prerogatives still enjoyed by foreign princes: it was intended for the making more plentiful and choice provision for the households of princes, and for their better accommodation when they travelled, in those ages in which accommodations requisite were not very easy to be met with [q].

BUT this branch of the prerogative was antiently so used as to be uncommonly oppressive to the subject. We find some traces of it before the Norman conquest [r]. Canute says, “Omnibus hanc porro impertimus
“alleviationem, ut quo prius opprimebatur onere, populum libere-
“mus. Imprimis, opprimis, præfectis meis omnibus mando, ut
“ex prædiis meis fuerint ad victum necessaria, suppeditent; neque alius
“quisquam victui nostro alimenta præstare invitus cogatur [s].” Henry I, with the advice of archbishop Anselm and that of his council, endeavoured to redress several grievances, which the people of this nation had suffered in the reign of his brother William Rufus. And to regulate the great abuses of the purveyors, which had so much distracted the government, and oppressed the people [t]. But the regulations of this prince were not carried into execution, or did not answer the end proposed; for

[q] See Bacons's Govern. of Eng. part. i. p. 166.

[r] LL. Canut. cap. 57.

[s] Coke's 2d Inst. p. 542.

[t] Spelm. in Henry I.

we are told by Lord Coke [u], that, before the statute of 28 Edward I, the insolence of the purveyors, bearing themselves so proudly under the great officers of the king's household, grew to that height, that they would take what, and as much as, they pleased; and many times where it might least be spared, and for others than for the king's household; and sometimes would pay nothing, and many times less than the true value; and many persons would make purveyance without any warrant at all.

IN order to prevent these grievances, which are also recited and acknowledged in the statute *Articuli super chartas*, cap. 2. the famous statute 28 Edward I, was made. But this law had not the desired effect; for in 11 Edward II, there was a complaint, that divers following the court, "*bona subditorum, nomine regis, et hospitia captant.*" And in the same year it was ordered, that no man shall take "*victualia aut alia mercimonia contra voluntatem possessorum, nisi prius soluto precio [w].*" But in 13 Edward III, the commons, in parliament, desired that the purveyors, though with the king's commission, might be arrested, if they did not pay for what they had. And again, the 17th of this reign, the commons desired a remedy against the outrageous takings of the purveyors: to which the king answered, that the statutes should be observed. And in the 18th, 25th, and 36th, years of this prince, there were statutes made to restrain the violencies of the purveyors: and another in 1 Richard II, another 7 Richard II, and another in 4 Henry IV. Yet it seems as if they all signified but little; for in 5 Henry IV, two fifteenths were granted, in parliament, upon condition that the purveyors should not take their goods and carriages against their wills.

BUT even after this grant, we find the commons, 8 Henry IV, praying payment for victuals taken by the purveyors, due since the time of the king's coronation; and the very next year, the speaker of the house of commons, in parliament, complained against the abuses of purveyors. In 1 Henry VI, there is a printed statute against them. Another 11 Henry VI, and another 23 Henry VI. However these grievances continued to much later times: for the house of commons complained to King James I, that there was a general, extreme, unjust, crying oppression practised by

[u] 2d Inst. p. 543.

[w] Bacon of Government, part ii. p. 38.

cart-takers and purveyors ; who have ravaged and ranfacked the country, fince your majesty's coming among us, far more than under any of your royal progenitors [x].

THE advantage arifing to the crown from purveyance, as to faving houfehold expences, was, in 35 Elizabeth, eftimated, communibus annis, at 25,000*l.* per ann. in 3 James I, at 40,000*l.* per ann. and in the reign of Charles I, at near 50,000*l.* per annum [y]. Some perfons were of opinion, that this prerogative was infeparable from the crown, fo that it could not be taken away. Lord Coke and Sir Robert Atkins fay it is, in exprefs terms [z]. And fo does Sir Robert Cotton. And Fabian Philips, in Charles the Second's time, wrote a long treatife, in which he profefles to fhew the antiquity, and, among other things, the neceffity of it.

BUT, happily for the nation, the members of the firft parliament after Charles II was reftored were of a different opinion, and were able to prevail upon that prince to confent to give it up. Accordingly, by Charles II, the right to purveyance in the crown was entirely abolifhed, except as to particulars neceffary for the accommodation of the king in his progrefles. And though the abolition of this right of purveyance may feem to have been chiefly of advantage to the lower kind of people, as farmers, &c. who were moft expofed to the takings and oppreffions of the purveyors, yet, in reality, it affected even the higheft people ; whofe lands being rented by thefe farmers, if the latter were oppreffed, they were fo much lefs able to pay their rents.

ANOTHER very confiderable advantage which we have gained over our anceftors is, that the king cannot billet or quarter any foldiers, or other perfons, upon private houfes, unlefs by the free confent of the owners. Of what advantage it is to be exempted from this burthen, any perfon may judge, either from his own imagination of the inconveniencies of it, or from the accounts we have of them as fuffered in other countries. The account we have from the ftates of France, affembled at Tours, of the miferable condition of the poor farmers of that kingdom, will not give us a bad idea of this matter. “ Les gens de guerre font fouldoyez pour
“ le defendement de l'oppreflion : et ce font ceux qui plus l'opprefsent.

[x] Hale of Parl. p. 233.

[y] Phil. Govern. of Eng. p. 262.

[z] Disp. Power. p. 54.

“ Il faut que le pauvre laboureur paye et souldoye ceux qui le battent,
 “ qui le delogent de sa maison, qui le font coucher à terre, qui le otent sa
 “ substance. Mais ils sont plus malheureux, car l’homme de guerre ne
 “ se contentera point des biens qu’il trouvera en l’hôtel de laboureur, ains
 “ il le contraindra à gros coups de baton, où de voulge, à aller querir de
 “ vin en la ville, du pain blanc, du poisson, espicèrie, et autres choses ex-
 “ cessives, et, à la verité, si n’ étoit Dieu qui conseille les pauvres et leur
 “ donne patience, ils cherroient en desespoir.”

SUCH was the blessed state of the poorer sort of people in that king-
 dom in former ages ; and if any person thinks that nothing of this sort
 has been done in France of late years, I desire he would only enquire of
 what passed in those provinces of that kingdom where the protestants re-
 sided, in the reign of Lewis XIV. And I doubt not but he will hear of
 still greater oppressions and barbarities from the Lodgements of the dragoons
 than these I have mentioned above. Indeed, the subjects must be at all
 times liable to them, where this power of free quartering soldiers, upon
 private families, is in the crown, unrestrained and unregulated by any
 laws.

IN England, we had no standing armies antiently, nor quartering sol-
 diers in time of peace, so that there was no provision made for quarter-
 ing any at common law, or by any statute that I know of. Yet sometimes
 our kings did thus oppress the people. In the two first reigns after the
 Conquest, it seems to have been practised to give free quarter, in private
 houses, against the will of the owner. For Henry I, in his charter to the
 city of London, exempts them thenceforth from that burthen. “ Neque
 “ de meâ familiâ nec de aliâ, vi, alicui hospitium liberetur [a].”

IN the reign of Edward III, the commons, in parliament, complained
 of being oppressed with the free quartering of soldiers [b] ; and in 8
 Henry VI, the commons petition that all such soldiers, as pass through the
 realm, do pay for their victuals and lodging. To which the king an-
 swered, that he would be advised [c]. And in the reign of Charles I, this
 quartering of soldiers was not only practised, but that in such a degree,
 that the house of commons complained loudly of it to the king [d] ; that

[a] Brady of Burghs, Append. p. 26.

[c] Cot. Abr. p. 595.

[b] Brady's Edward III. p. 239.

[d] Rushw. vol. I. p. 548

in apparent violation of the antient and undoubted right of all your majesty's loyal subjects of this your kingdom in general, and to the grievous and insupportable detriment of many countries and persons in particular, a new and almost unheard-of way hath been invented, and put in practice, to lay soldiers upon them, scattered in companies here and there, even in the heart and bowels of the kingdom, and to compel many of your majesty's subjects to receive and lodge them in their own houses, and both themselves and others to contribute towards the maintenance of them; to the exceeding great detriment of your majesty, the general terror of all, and the utter undoing of many of your people [e]. And the same author observes, that in 2 Car. I. the soldiers broke out with great disorders, they mastered the people, disturbed the peace of families and the civil government of the land: there were frequent robberies, burglaries, rapes, rapines, murders and barbarous cruelties. And unto such places as did not tamely submit to the counsellors of this prince (though there was but very little opposition to the measures of the court at that time) the soldiers were sent for a punishment; and, wherever they came, there was a general outcry: the high-ways were dangerous, and the markets unfrequented. But, in opposition to these practices, the commons, in parliament, affirmed, that every subject of this kingdom had a full property in his goods; and, in the petition of right, they demanded it, as their known freedom, to have the soldiers and mariners quartered upon any private persons, contrary to their consent, withdrawn, to which the king answered, "Soit *droit fait comme il est désiré* [f]."

By a clause in an act of parliament 31 Charles II, it is declared and enacted, that no officer, civil or military, nor other person whatsoever, should from thenceforth presume to place, quarter, or billet any soldier or soldiers, upon any subject or inhabitant of this realm, of what degree, quality, or profession soever, without his consent. And the quartering which is now allowed upon public houses, victuallers, and the like, is only by virtue of a clause in the munity act, which is made every year, and expires at the end of it; so that it is entirely at the will of the parliament whether this power shall be continued in the crown or not: and in

[e] Rushw vol. ii. p. 424.

[f] Rapin, vol. vii. p. 379.

all the mutiny acts, provision is made, that the provisions given to the soldiers and their horses, so quartered, shall be paid for duly at settled rates. In a word, there is, at present, no way left for the crown to raise money upon any of the subjects, except by consent of parliament. And when money is to be raised upon the subjects, all bills for that purpose must take their rise in the house of commons; who can best judge, and are most concerned to judge, what things it is most for the convenience of the people to have the taxes laid upon: and who are always willing to receive petitions from them, or to hear reasons from their representatives, against any bill that is likely to bear too hard upon the subjects in general, or upon any particular part of them.

THE house of lords, though they can reject a money bill in the whole, yet cannot make any alterations in it, or at least not so as to increase the sum given. And, in this particular, the commons have always been jealous of their privileges; for we find, in Rot. Parl. 9 Henry IV. N^o. 21. [g] a complaint of the commons, of a breach of privilege, in that the lords several times acquainted the king with what passed in parliament about a subsidy, before it was agreed upon. And 16 Car. I, it was resolved, that the lords voting the propounding and declaring the matter of supply, before it was moved in the house of commons, was a breach of privilege of the house [h]. There have been instances formerly, when the lords have given money for themselves and their tenants, separate from the subsidy of the other commons. For 13 Edward III, the lords granted the king the tithe of all the corn growing upon their demesnes; and the commons granted nothing [i]: or, at least, their aid was conditional [k]. 12 Edward II, the lords spiritual and temporal, by themselves, granted to the king the tenth part of one whole year's revenue of all and singular their possessions: weile, at the same time, the commons granted to the king 14,000 archers, to serve the king, at their costs, for one year; the same to be levied out of all men's lands according to proportion [l].

BUT of late, there has not been any attempt made by the lords to make any separate grant of that nature: so that the sole right of giving rise to

[g] Cott. Abr. p. 465.

[h] Rushw. vol. ii. p. 1147.

[i] West. Peers, p. 9.

[k] Cott. Abr. p. 19.

[l] Ibid. p. 638.

money bills, and determining the amount of the sums to be raised, seems to be allowed to the house of commons. The parliament, at present, in granting money, does for the most part appropriate it to particular services, whereby the application of it is the more effectually secured. This was likewise done formerly, upon some occasions. 1 Richard II, there was an appropriation of a subsidy given, to the use of the war only: and Philpot and Walworth were appointed receivers and keepers of it to that use [m]. And in the latter end of the reign of Edward III, there was such another appropriation either made, or requested, by the commons [n]. 5 Richard II, a subsidy of tonnage and poundage was granted, upon condition that it should be applied for the sea service, and for no other purpose. 6 Henry IV, the commons appropriated the subsidies they granted to the use of the war, and appointed Lord Furnival and Sir John Pelham receivers and keepers of the money for that use [o]. This caution however was not often observed, except in cases where bad or weak management was suspected from the crown or its ministers.

BUT, since the Revolution, the method of appropriations hath been generally introduced: which naturally secures the right application of the money, and gives a right of enquiring whether this appropriation has been duly observed, and of making any alteration that may be afterwards found proper and expedient. And when money is granted by parliament, the commissioners who are to be employed in raising it, are, in case of the land tax, named by the house of commons itself: a circumstance which was thought of no small importance, by the states of France, when they had the privilege of raising money. They then always named their own commissioners [p].

AT present, in France, the king having obtained that right, there are great complaints made of the oppressive practices of those who are concerned in levying the royal revenue. “Un collecteur impose à un homme à la taille deux ou trois fois au de là de son revenu comment se pourvoir. Il faut payer par provision les trois ou quatre cens ecus, à quoi est taxé un homme qui n'en possède pas la moitié de revenu. Apres, un peut se pourvoir. C'est à dire monter de barreau en barreau jusque à une cour

[m] Cott. Abr. p. 156.

[n] Ibid. p. 146. No. 20, 21.

[o] Ibid. p. 428.

[p] See Pasq. Rech. de la Tailles, and Vauban's Dixme Royale.

“ souveraine;

“ souveraine ; plaider trois ou quatre ans, consumer en frais de justice
 “ trois fois autant que vaut le principal ; et au bout de tout cela ne rien
 “ retirer. Car ceux qui manient les affaires du roi, et qui exercent les
 “ droits, ont toujours raison [q].” This account may possibly be some-
 what aggravated ; but that it is not altogether without foundation ap-
 pears from a writer less to be suspected, who represents to the king of
 France, “ that the avarice of the farmers of taxes is such, that, provided
 “ they can fill their pockets, they care not how much they expose the glo-
 “ ry of your name [r].”

HERE in England, the right of naming and appointing commissioners
 for taxes was antiently in the crown, and was commonly exerted by
 it [s]. In the aid which was granted to Henry III, when Magna Charta
 was passed, there is the form of the commission [t] ; and in the other
 grants which came afterwards, the king is desired to issue out his com-
 missions for the levying them as customably [u]. The commissioners,
 by those commissions, had power to examine all men upon oath, as to
 the true value of their estates [w]. In the most antient times, the talle-
 ges were usually imposed and set by the king’s judiciars, in their respective
 iters ; but afterwards by commissioners appointed by the king for that
 purpose.

BEFORE 8 Edward III, there were two chief taxers appointed by the
 king, in every county ; who appointed twelve in every hundred, to rate
 every man’s personal estate, according to the true value ; and then to levy
 such a part of it as was granted in parliament. These chief taxers also
 appointed such, and so many as they thought fit, in every city and town
 of the king’s demesne, to enquire into every man’s personal estate in those
 places, and to levy such part thereof as had been granted, in parliament [x].
 And that they might value every man’s estate truly, these taxers were
 sworn not to do otherwise for love or hatred. But 8 Edward III, there
 was a complaint made to that prince, by parliament, that the taxers and
 collectors, for bribes, spared some men, and, by the colour of their office,

[q] Les Soupirs de France, part ii. p. 17.
 [r] Test. polit. de Colbert, p. 322.

[s] See Bra-

dy of Burghs, p. 30.

[t] Rot. Parl. 29 Henry III, in dorso.

[u] Rot. Parl. 6 Richard II. N°.

16. ibid. 2 Henry IV. N°. 9. and ibid. 4 Henry VI. N°. 12.

[w] Madox’s Hist. Excheq. p. 503.

[x] Brady of Burghs, p. 39.

extorted from others more than they ought to pay, and applied it to their own use. Whereupon there were commissioners sent by the king through all England, to settle and agree with the several cities and burghs, what they should pay respectively, for tenths and fifteenths, &c. which sums were fixed upon the particular cities and burghs respectively for the future, and were made the standards of all future taxations [y]. 21 Edward III, the commons complained, that divers extortions and grievances were done to the people, by the collectors of wool, and the taxers of other tallages and their deputies [z].

THOUGH still the chief taxers and commissioners were named and appointed by the crown, yet, 25 Edward III, the commons petitioned, that none of their house might be made collectors of the aid granted. But the king denied their request [a]. However, they petitioned for the same thing, 45 Edward III, but still in vain. But in the 51st of this reign, the king granted their request [b]. Commissioners, for levying the aids granted by parliament, were appointed and named by the crown 34 and 37 Henry VIII, 2 and 3 Edward VI, 4 and 5 Philip and Mary, 15 and 22 Charles II.

BUT at present, and since the Revolution, the power of naming commissioners for the land tax, is exercised only by the house of commons yearly, in the act by which that aid is granted. These commissioners must be persons of some figure and credit in their several counties; the qualification to act in that capacity being 100*l.* per ann. in that county where they act. Their knowledge of each other's fortunes, and their neighbourhood, will dispose them to act equitably by each other. And as these provisions are made for the ease of the subject, in raising the land-tax, so in all other impositions upon goods, the like care is taken to prevent any grievance, as much as may be. The king has indeed the nomination of the commissioners of the customs and of the excise; and by them, or by the commissioners of the treasury, he can nominate all subordinate officers of each: and the commissioners of excise have a judicial authority, in some cases, without any appeal, but to the commissioners of appeals, also nominated by

[y] Brady of Burghs, p. 39.

[z] Cott. Abr. p. 62.

[a] Ibid. p. 79.

[b] Ibid. p. 148.

the king; or in the country to the justices of the peace at their quarter sessions, who are also named by the lord chancellor.

HOWEVER, their methods of proceeding are so far prescribed by parliament, and they are so much under its eye and correction, that there is no room for any great grievance or oppression. Nor have we, in fact, hitherto heard of any committed by them; though the extension of the excise laws, and thereby depriving English subjects of that antient constitutional method of trial by juries, which has stood the test of so many ages, and been one of the great bulwarks of our liberties, will always be looked upon with that horror and detestation which it deserves. But, I hope, this will never be attempted; and in every other case there is as great care taken for the ease of the subject, in regard to levying of money granted, as can well be, consistently with preserving the rights of the crown: at the same time, that the right of giving money is now unquestionably settled to belong to the parliament only.

S E C T. III.

Of the Times for the meeting of the Parliament, its Privileges, and the Order and Effect of its Proceedings.

IN consequence of this unquestionably-established right, that no money can be raised but by the authority of parliament, the nation has a greater and more effectual security, than it would otherwise have, of annual meetings of its parliament. Indeed it is not clear whether, by the laws now in force, the nation is entitled to a session of its parliament, more than once every three years. For though, perhaps, it was in pursuance of the antient constitution or custom of the realm, that an act of parliament was made in 4 Edward III, providing, that there should be a parliament held once every year, or more often if need should be: and though this act was enforced with another in 36 Edward III. stat. 1. cap. 10. rather more expressive than the former, because the clause "if need be" was left out; yet these acts were not much observed from the beginning.

DURING

DURING the Saxon constitution, we are informed, from the Mirror of justices, chap. 1. sect. 3. that “pur le estat del royaume fist le roy Alfred assembler les committees, et ordeigne, pur usage perpetuelle que à deux foits par l’an où plus souvent, pur mestier en tempts de peace, se assembleront à Londres pur parlementer sur le guidement del people de Dieu, coment gens se garderent de peche; viverent en quiet, et receiverent droit per certaine usages et saints judgments. Per cet estatute, se fierent plusieurs ordinances par plusieurs roys jusque al ore roy: quelles ordinances sont disuses per moins sages; et pur default que elles ne sont my mise en escript, et publies en certaine.” And in chap. 5. sect. 1. it is further said, that “Abusion est que où les parlements se duissent faire pur le salvation des almes des trespasseurs et ces à Londres, et deux foits per an. La ne se font ils ore forsque rarement, et à la volunt le roy par aides et cuilets, de tresore, &c.” Many other authors were of the same opinion [a]; *i. e.* that, before the Norman conquest, it was established by law for parliaments to be held twice a year. But on the other hand many learned men have thought, that there is no great force in either of these authorities, for proof of this point.

BECAUSE, in the first place, parliaments in those ages, were held at other places as well as at London. Particularly King Ethelstan, who was not long after Alfred, held great councils or parliaments at Grately, Exeter, Feversham, Thunderfield, and Thitlanbirig, as well as at London [b]; which appears from his laws which we have extant. Now he would hardly have done so had there been any express law of Alfred’s, as the Mirror says, that London should be the only place for holding parliaments. But, secondly, there is reason to doubt whether the author of the Mirror, who lived in the time of Edward II, had ever seen such a law, as he mentions, of Alfred’s. Because, if any such law had been known in that time, it would probably have been quoted by the lords ordainers, in 3 Edward II, who, in the 29th article of their ordinances, appoint, that the king shall hold a parliament once every year, or twice if there be need: they would probably have alledged such an antient law, had they known it, to

[a] See Sir Robert Atkyns of Parl. p. 95. Bishop Atterbury’s Rights &c. of a Convocation, p. 31, 32.

[b] Hody’s Convoc. p. 62.

give countenance to their new ordinances. Or, it is not improbable that the author of the Mirror, finding that Alfred had made several regulations in the policy of this nation, and that among others he had appointed two general shire-gemotes, or general county courts, every year, he understood those meetings to have been parliamentary conventions. For, in fact, this very mistake has been made by some modern authors, from the law of Edward the Confessor, (tit. de Greve) which law, though they represent it as speaking of parliamentary conventions, yet really means nothing more than full county courts [c].

HOWEVER, though there be no sufficient evidence that there was ever any law for annual parliaments, there is evidence enough that there were such parliamentary assemblies held frequently at the king's court, on the three great festivals of Christmas, Easter, and Whitsuntide. Even in the Saxon times, the great men used to appear at court, on those solemn occasions, in state, to pay their duty to the king [d]; and, when the feasting was over, they often used to assemble in a parliamentary way, to consider any business that wanted to be dispatched. And this custom continued, after the Norman conquest, till the reign of Henry II, from whence forward it was by degrees laid aside.

So that the nation had been antiently used to parliamentary meetings; and therefore it is no wonder, that when they came to be too little practised, and grievances arose thereupon, which could have no remedy, the nation should petition for, and obtain, remedy by the law, 4 Edward III, for frequent parliaments. The petitions of the commons, in parliament, in 50 Edward III, and 1 Richard II, that parliaments might be holden every year, plainly implied that they had not been so holden. Nor have they been more exactly observed in most of the succeeding times; at least not since the reign of Henry VII. For, from his time, to that of William III, there have been, in most of the reigns, intermissions of holding parliaments for several years together. On this account, some persons have thought that our kings all along looked upon it, as the right of their crown, to judge whether there would be need of a parliament every year.

[c] Kennet's Eccles. Synods, p. 222. and Wake's State of the Church, p. 135, 136.
dy of Convoc. p. 58. who quotes several antient authors to prove this point.

[d] See Ho-

or not; and that the clause "if need be" was intended to refer this matter to their judgment [e]. And, indeed, the answer made by Richard II, to the petition of the commons for annual parliaments, in the first year of his reign, as it is represented in Cotton's Abridgment of the Rolls of parliament, may seem to intimate that prince thought so. For there he is made to say, that as to holding a parliament every year, let the statute made for the same be held, but the king will have his pleasure: which expression seemed to imply, that he was a judge whether a parliament ought to be held or no, even though that statute was allowed to stand in force.

BUT when we see, in the rolls at large, the true answer of this king, there is no colour for putting this interpretation upon it. The petition of the commons was, that, "*plese à notre dit seigneur de tenir parlement un foitz per an, meynz et ceo en lieu convenable [f].*" To which the king answered, "*quant a ceo que parlement feroit tenuz chacun an soient les estatuts ent fait tenuz et gardez. Mais quant à lieu où le parlement se tendra le roy eut sa volonté;*" which plainly implies, that the former was not his will. Agreeably to this, amongst the causes for which the parliament, in 2 Richard II, was called, the bishop of St. David's, by the king's command, declared this for one [g], "*secondement pour ce que autrefois à la priere des seigneurs et communes estoit ordaignes et assentrez que parlement feroit tenuz chacun an; mesme nostre seigneur le roy veul- lant tout dis faire tenir tout bonne covenant, et mettre en execution chaucun ordinance fait en ses parlements, si ad il purtant fait semondre parlement.*"

THESE passages shew clearly enough, that the king knew it to be the design of those acts of Edward III, that a parliament should without fail be held every year; and not that the king should determine whether it would be convenient to hold one or not. For if that had been all, the acts would have been made to no purpose: as the king had the same authority before those acts were made, and consequently the end of making them was plainly to ascertain the advantage the nation would receive in having a yearly parliament. But whatever the succeeding princes came to think.

[e] See duke of Buckingham's speech, in Echard's Hist. Engl. p. 413. Burnet's History of his own Times, vol. iii. p. 401. *ibid.* vol. ii. p. 106.

[g] *Ibid.* 2 Richard II. No. 4.

[f] Rot. Parl. 1. Richard II. No. 95.

of the statutes, they did, in fact, as I have already observed, shew but little regard to them. And their lawyers seem to have informed them, that they were not obliged to have any; for the Lord Chief Justice Finch, in the trial of Hamden [h] said, that the king is not bound to call the parliament but when he pleaseth. And Charles I [i], published a proclamation, in which, among other things, he says, that “whereas, for several ill ends, the calling of another parliament is divulged, his majesty declares, that the late abuse having, for the present, driven his majesty unwillingly out of that course, he shall account it presumption for any to prescribe any time to his majesty for parliaments; the calling, continuing, and dissolving of which are in the king’s own power”.

AFTER this and many other attacks of the like kind, the nation came to be so little sensible of the force of those acts of Edward III, though known to be unrepealed, that the act for triennial parliaments, 16 Charles II, even while it refers to those statutes, goes no farther than to declare, that the setting and holding of parliaments shall not be intermitted, or discontinued, above three years at the most: “but that within three years from and after the determination of this present parliament, and so, from time to time, within three years after the determination of any other parliament or parliaments, or, if there be occasion, more or oftener, your majesty, your heirs, and successors, do issue out your writs for calling, assembling, and holding another parliament. To the end that there may be a frequent calling, assembling, and holding of parliaments once in three years at the least.” Which plainly implies that the intermission of the sitting of parliaments, for less than three years time, was not contrary to law; but that the crown, if it thought proper, might legally so practise: for if it had been judged contrary to law, it certainly would not have been so much as tacitly permitted by an act of parliament.

ACCORDINGLY when it was moved, in the house of lords, A. D. 1677, that the prorogation of the parliament, made in 29 Charles II, for fifteen months, was contrary to the statutes of Edward III, above-mentioned, and an illegal procedure, this motion was over-ruled, and the

[h] P. 200.

[i] Rushw. vol. ii. p. 3.

authors of it even committed to the Tower. And none of the subsequent statutes have made any farther regulation in this particular: for the act for triennial parliaments, in 6 William and Mary, chap. 2, enacts only, that a parliament shall be holden once every three years at least; and the act for Septennial parliaments, 1 George I. stat. 2. Chap. 38, leaves this matter as it was before. So that, upon the whole, as the statutes, relating to this matter, have been understood, and practised, it is not very clear whether the nation be intitled to any more than one session of parliament, and that as short as the king pleases, once every three years.

BUT the circumstances of our nation are such at present, and are likely to be such for the future, that they will cause a necessity for the parliament's meeting, and sitting to do business, some time in every year. For the money necessary for paying the forces by sea and land, for providing for the navy, the ordnance, and other emergent national charges, is now wholly dependent upon parliamentary provision; and that provision is made but for one year, at a time; so that before another year comes on, there will be a necessity for a session of parliament to renew this provision. Besides, if any troops are kept on foot in time of peace, a legal authority of punishing, in a summary way, by martial law, for the preservation of discipline, and preventing mutiny and desertion, among them will be requisite; as also an authority to dispose the troops into fit quarters.

FOR to exercise these authorities, unless they be given by parliament, is declared to be contrary to law, by the petition of right, 3 Charles I, and by the declaration of rights, 1 William and Mary, art 6, and many times since, in the preambles to the statutes made yearly against mutiny and desertion; so that without such authority the troops cannot legally be billeted even upon public houses. Now the acts of parliament that grant this power to the crown are made only for one year, and expire at the end of it: hence therefore it is evident, that, if the law be duly regarded, there is, and will be, a necessity for a meeting of the parliament, and of their sitting to do business, some time in each year.

AND when the parliament is met, though indeed the time of their session depends upon the king, yet they have in their own hands the means of engaging him to continue their session as long as the national interest appears

pears to them to require it. For they are at liberty to treat upon whatever business they think proper, and to make whatever applications to the crown they think fit, before they grant any supplies, or the other necessary powers abovementioned.

IN former times, the crown has prescribed to them both the order of their proceeding upon business, and the nature of it. "Le roi (Edward III) voet que toutes maneres des petitions, et autres singulieres besoignes demoergent en suspenſe, tanque cette soit mys à bon fin [k]." Again, "Le roi (Richard II, par son chancelier Mich. de la Pole) vous com-mande (viz. les Seign. et les Com. en Parl.) qu' ayant due confidera-tion à les necessaires matieres à vous demonstrez, et à les importables mis-chiefs apparant; vous voulliez communer diligeaument sur les ma-tieres et remedies besoignables, à tout le haste que vous porrez oustant de tout le communement d'autre matiere collaterale quelconque en le moyen temps. Et postea tout autre impertinente matiere mise à der-riere pour le tems [l]." And, in this same prince's reign, Tresilian and other judges, being consulted whether, if the king proposed articles of business for the parliament, the lords and commons were not obliged to go upon those articles first, declared that they were; and that if any one presumed to act contrary, he was to be punished as a traitor [m].

AND when, in opposition to this assumed prerogative of the crown, the commons have formerly claimed the right of treating matters in what order they pleased, they could not gain that point. For in 2 Henry IV, the commons declared, that it was not the use that they should grant any subsidy before they had answer to their petitions; and prayed the obser-vation of it from henceforth. The king required a conference with the lords; and at the last day of parliament it was answered, that there was never any such use seen, but that the commons should first make an end of all other things, which use the king meant not to alter [n]. And so late as Charles the First's time, this point was much disputed between the court and the house of commons [o].

AND they were not only under some restraint as to the order in which they were to treat of business, but also as to the nature of it. Some

[k] Rot. Parl. 47 Edward III. N°. 2. and Brady's Edward III. p. 226.

N°. 2.

[m] See West, of Bills of Attainder, p. 90.

[o] See West, on Attainder, p. 91.

[l] Rot. Parl. 7 Richard II.

[n] Cott. Abr. p. 406. N°. 23.

points they were not allowed to meddle with, unless the crown gave them leave. For instance, when Thomas Haxey, clerk, in the parliament, 20 Richard II, delivered a bill to the commons, against the multitude of bishops and ladies who lived in the king's household, and were chargeable to it; desiring that the bishops might be obliged to reside upon their dioceses, and the ladies to go to their own estates; and also complaining of a tax of 4*d.* in the pound, laid by the pope, last year, upon the clergy of the diocese of Canterbury, against the regalty of our lord the king to the destruction of the clergy, &c. [p]:

THE king, being informed of the bill, was very much offended, telling the lords that the commons had thereby committed offence against him, his dignity and liberty; which he willed the lords to declare the next day to the commons: and his majesty commanded the duke of Lancaster to charge Sir John Buffie, speaker of the house of commons, upon his allegiance, to tell the duke the name of him who had delivered the bill to the commons. Soon after, the lords had a conference with the commons, and declared to them the will and commandment of the king; and pursuant thereto the commons delivered the bill, with the name of Thomas Haxey the exhibiter of it, unto the lords, which was given to the clerk of the parliament. All this being done, the king prevailed so far with the lords as that it was declared and adjudged, Feb. 5. That if any one, of what state or condition soever, should move or excite the commons of parliament, or any other person, to make reformation of, or in, any thing which concerned the king's person, his government, or regalty, he shall be held as a traitor.

AND thereupon, Feb. 7, Thomas Haxey was brought before the king, the lords temporal, and the commons, in Alba Camera; and the bill being read, it was demanded whether he delivered the said bill to the commons, or no. He answered he did, "*et intentione sua propter honorem et proficuum regis, ac dominorum, et totius communitatis regni.*" But this was not admitted as a good plea; and judgment was immediately given against him as a traitor. The prelates protested against this proceeding, and prayed the king to pardon Haxey, as far as

to his life, and to grant to them the custody of him: which the king did, and Haxey, after the parliament was ended, got a full pardon.

It is true, that this whole procedure against Haxey was reversed in a parliament held 1 Henry IV. Rot. Parl. N^o. 9. He therein set forth, that he had been “*de volonté du dite Richard II,*” adjudged a traitor, “*en contre droit et la course quel avoit use devant en parlement,*” and prayed the king to cause the record and process of that judgment to be erased and annulled as erroneous. And this was done by the king “*de l’avis et assent de tout les seigneurs espirituelx et temporelx,*” and Haxey was fully restored to his blood, fame, and estate.

MOREOVER, 1 Henry IV [q], this judgment was enforced with a petition of the commons, in parliament, who declared, that the judgment against Haxey had been contrary to the ancient customs of the commons, in parliament; and therefore they pray that Haxey might be restored in honour and estate, as well for the sake of justice, as for establishing the liberties and privileges of the commons. To which petition of the commons the following answer was given: “The king, by the advice and assent of all the lords spiritual and temporal, declares, that the said judgment given against the said Thomas Haxey, Clerk, “*soit de tout cassez, reversez, adnullez, et tenuz de nul force ne d’effect, et que dit Thomas fut restitut à les noun et fam, et fait et tenuz persone hable en manere come il fut devant le dite jugement.*” But though the commons gained this point in favour of Haxey, and at the same time made a declaration in favour of their own privileges, yet the crown did not understand this to be a permission to them to treat of what matters they should think fit: for when the commons, in parliament 11 Henry IV [r], petitioned the king that half the profits of the benefices of such clergymen, as resided not upon them, might be applied to the king’s use; the king answered, that this matter belonged to the church.

IN Edward the Sixth’s time, the commons asked leave to treat on some particular points. This evidently appears by their own journal, the words

[q] Rot. Parl. N^o 104.

[r] Rot. Parl. N^o. 70.

of which are as follows, “18th Nov. 3 Edward VI, it is ordered, that Mr. Speaker, and such members of this house as are of the king’s privy council, shall be suitors to know the king’s pleasure, if, upon their humble suit, the house of commons may treat of the last relief for cloaths and sheep, at four o’clock in the afternoon. And Nov. 30, Mr. Controller reporteth that the king’s majesty is pleased with the petition for the relief, and giveth licence to treat upon it[s].” In Queen Elizabeth’s time, the commons were, by her order, restrained from treating on some points. “If any bill relating to matters of state, or reformation in causes ecclesiastical, be exhibited, says the speaker, I am commanded, upon my allegiance, not to read it [t].” January 21, in 23 Elizabeth, the house of commons, having appointed a fast day, Mr. Vice-Chamberlain, by the queen’s command, shewed to them her great admiration of the rashness of the house, in attempting, and putting in execution, such an innovation as a fast, without her majesty’s privy and pleasure first known. The house agreed, that Mr. Vice-Chamberlain should carry their submission to her majesty.

ON Saturday 24th Feb. 35 Elizabeth, Mr. Peter Wentworth, and Sir Henry Brombley, delivered a petition to the lord keeper, therein desiring the house of lords to be suppliant, with the house of commons, to her majesty, for entailing the succession of the crown, whereof a bill was already drawn by them. Her majesty was highly displeased with this proceeding, ordered them to be summoned before the privy council, and Wentworth was committed to the Tower: and Sir Henry Brombley, Mr. Stephens, and Mr. Welch the other knight for Worcestershire, to whom Brombley had imparted the matter, were committed to the Fleet[u]. And when the house was moved to apply to the queen for their liberty, nothing appears to have been done in it[w].

KING James I said, in council, that the right of the commons to deliberate upon state affairs is, by the words of the writ, restrained to “quibusdam arduis negotiis,” *i. e.* to such as his majesty shall consult them upon[x]. And on Tuesday 4th December 1621, that prince, in a letter to Sir Thomas Richardson, speaker of the house of commons, says, “These

[s] Hale of Parl. p. 101. Atterbury of Conv. p. 449. [t] Dew’s Journal, p. 470.
Jus Parl. p. 260. [w] Dew’s Journal, p. 470. [x] Rapin, tom. vii. p. 179.

“ are therefore to command you to make known, in our name, unto the
 “ house, that none therein shall presume henceforth to meddle with any
 “ thing concerning our government or deep matters of state; and namely
 “ not deal with our dearest son’s match with the daughter of Spain, nor to
 “ touch the honour of that king, or any other of our friends and confede-
 “ rates: and also not to meddle with any man’s particulars, which have
 “ their due motion in our ordinary courts of justice [y].

THIS sudden stretch of the prerogative, and at a time when the nation
 seemed to be threatened with great danger, was very alarming to the com-
 mons, who thereupon made a protestation, “ that the liberties, franchises,
 “ privileges, and jurisdictions of parliament, are the antient and undoubted
 “ birth-right and inheritance of the subjects of England; and the arduous
 “ and urgent affairs concerning the king, and the church of England, and
 “ the maintenance and making laws, and redressing of mischiefs and grie-
 “ vances, which daily happen in this realm, are proper subjects of council
 “ and debate in parliament.” This protestation was so opposite to the
 high notions of prerogative which influenced the court at that time, and so
 very disagreeable to the king, that he, in the presence of his privy council,
 tore it out of the journal-book of the house of commons, with his own hands,
 Yet the commons were not discouraged by that proceeding, but still insisted
 that freedom of debate was their antient and undoubted right and privilege,
 though they were often restrained by the arbitrary power of many of our
 former kings: and, at length, the house of commons was acknowledged to
 be entirely at liberty as to treating both whatever matters, and in whatever
 order it thinks proper. Though the king’s speech, at the opening of the
 parliament, is commonly employed to suggest the chief matters, which the
 crown thinks proper for the deliberation of parliaments at that time, yet the
 houses are not confined only to those matters: none of any sort are exempt-
 ed from their cognisance.

THEY can take into consideration any business whatever, ecclesiastical
 as well as temporal. And they cannot only treat of every thing, in what-
 ever order they think proper, but they can do it with freedom; the king

[y] Petyt, Jus Parl, p. 280.

PART II.

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cannot

cannot either put any force upon them, or threaten them. And as they are free from any restraints, on the part of the king, as to treating of any business, so likewise are they free from any tumultuous petitions, that may be made to them, by the people, to hinder their freedom. This is prohibited by 13 Car. II. stat. 1. cap. 5. which declares that no person shall solicit, or procure, the hands or consent of more than twenty persons to any petition, complaint, remonstrance, or the like, to the king, or to either, or to both houses of parliament, for the alteration of matters established by law, in church or state; unless the matter thereof has been first consented to, and ordered by, three or more justices of the peace, or the major part of the grand jury of the county, at their assizes or quarter sessions; or, in London, by the lord mayor, aldermen, and common council.

SECONDLY, It is enacted, that no person shall repair to the king, or to either or both houses of parliament, on pretence of petitioning or the like, accompanied with above the number of ten persons, under any penalty not exceeding 100*l.* and three months imprisonment, without bail or mainprize. Provided this act shall not extend to either house of parliament going to his majesty, nor debar any number of persons, not exceeding ten, from presenting any public grievance or complaint to any member of parliament after his election, or even to his majesty, for remedy thereupon to be had.

AND not only the right of the whole house, to treat of any matters, is sufficiently established, but also the right of each particular member to be, at all times, present, and assist at all debates that come before the house, and to speak in them, and vote, as freely as he thinks proper; subject only to the judgment of the house of which he is a member. Our kings formerly took upon them to restrain some persons, with whom they were displeased, or apprehended opposition from them to their measures in parliament, from appearing there for, that purpose. Edward III, in the 4th year of his reign, denied the then archbishop of Canterbury entrance into the house of lords, till he had answered certain articles objected against him in the Exchequer [z]: and even afterwards continued to refuse him entrance,

[z] Philips, of Govern. p. 417. Elfyng, of Parliaments, p. 27.

till he was admitted upon the intercession of the lords. Bishop Gardiner, in Edward the Sixth's time, complained, in a letter to protector Seymour, of his being denied the privilege of assisting in parliament [a]. Mr. Wentworth, in Queen Elizabeth's time, was forbidden to come to the house of commons, and was even confined. Sir Edwin Sandys was treated in like manner, in king James the First's time. The Earl of Arundel was, in king Charles the First's time, committed, by the king, to the tower of London, during the session of parliament, and detained there, for some time, without any other reason assigned than his having done some misdemeanour against his majesty [b]. And, in the same reign, the earl of Bristol had his writ of summons sent to him, but it was accompanied with a letter from the lord keeper, signifying to him, that it was the king's pleasure that he should not come to parliament.

BUT both houses of parliament having, in those cases, and in others of the like nature, applied so vigorously to the throne for the release of their respective members, and liberty for them to attend in parliament, that they always obtained these requests; it is accordingly, at present, fully established as a right, that no member of either house can be detained from the service of it, or at all imprisoned, except he be charged with either treason, felony, or breach of the peace; and, in the last case, will not or cannot, give sufficient sureties for his future good behaviour. In any of these cases indeed, because the welfare of the public requires that persons charged with these great crimes should be secured, if they deserve it; it is therefore allowed, that any member of parliament charged with them, upon sufficient evidence, and upon oath, may be committed to prison, until he shall be tried and discharged in the ordinary course of law.

BUT these are the only causes for which the members can be legally imprisoned. In regard to which the privilege of the house of commons is now much better secured than it was in former times. For though all the peers were, by virtue of their peerage, ever held to be exempted from any attachment or arrest an account of civil actions, yet this privilege was not thought to extend to the members of the house of commons. This appears from two writs now extant, which were issued out by Ed-

[a] Coll. Eccles. Hist. vol. ii p. 33.

[b] Elsyng of Parl. p. 151.

ward II, in the 8th year of his reign [c], reciting that the suits of law, in which the members attending parliament were engaged, might not go to their disadvantage, on account of their absence, and therefore requiring his justices to forbear proceeding to take assizes against them. These writs, though very reasonable in themselves, were not regarded in the following reigns, or deemed sufficient to entitle the commons to the privilege of not being impleaded at law, during the session of parliament. Nor, indeed, did they expressly claim the privilege of not being impleaded, in their petition, in parliament, to Henry IV, regni 5. Rot. Parl. 71. in the following words: Item, “ priount les communes que selon la cue-
 “ tume du royaume, seigneurs, chivaliers, citoyens et bourgeois, à vos
 “ parlementz de vostre commandement venantz, illeques demurrantz,
 “ et à leur propres retournantz, et leur homes et servantz avec eux en le
 “ dit parlement de foutez vostre especial protection et defense, ne devoient,
 “ par aucun dette, account, trespass, où autre contract queconque, estre
 “ arrestuz, où en aucun manere emprisonnez en la mesme temps, et ja
 “ soit ensi que souvent soit plusours de autiels homes venantz à vos parle-
 “ mentz et autres leur homes et servantz durant le dit parlement ont esté
 “ arrestuz par ceux qui ont eu plein confiance que ceux ensi arrestuz
 “ furent de parlement, où des homes et servantz de ceuz de parlement,
 “ come est dit, en contempt de vos, grande damage de partie, et retar-
 “ dation des besoignes de vos parlementz; plaist establir que si aucun de-
 “ forereauvant face arrester aucun tiel home venant al parlement come est
 “ dit, ou aucun de leur homes et servantz en le dit parlement, où eux
 “ demurrantz, durant le parlement, ou aucun chose attempt encontre la
 “ custume, face fin et rauncian à votres, et rende al partie greve, ses
 “ damages à treble. Resp. y a sufficient remède en le cas.”

THEY did not, I say, herein expressly claim the privilege of not being impleaded, during parliament, but only of not being arrested and imprisoned; and even that the king did not directly or fully grant them. Nor did the judges in the following times admit it to be their due in all cases. On the contrary, the suits against them, in time

[c] Prynne's 4th Reg. 834.

of parliament, were suffered to proceed so far as even to judgment; in consequence of which members of the house of commons were, in several instances, taken in execution. And when they were so, the judges held that they could not be set at liberty, by a writ of privilege, nor by any thing less than a special act of parliament [d]. In 8 Henry VI. Rot. Parl. No. 57. William Lark, who was servant to William Milrede, member of parliament for London, was condemned in a suit for 208*l.* 6*s.* 8*d.* before the summons in that parliament, in execution for which, he was taken in the time of the session of parliament, and committed to the Fleet. On the petition of the commons, in parliament, a special act was made for his releasement, saving to Margery Jaccynes, at whose suit he was taken, the execution of the said judgment against him, at the end of the parliament.

IN like manner was Walter Clarke, member for Chippenham, 39 Henry VI. [e], set at liberty by a special act of parliament. This gentleman after his coming to parliament, and during the session of it, was arrested, at the king's suit for 40*l.* at the suit of Robert Bassett, for 40 marks, in an action of trespass; and at the suit of John Payne for 20*l.* for an action of maintainance and was committed to the Fleet: and, after he was so committed, he was outlawed at the suit of the said Payne. Hereupon the commons, in parliament, petitioned that, by act of parliament, the king would order his chancellor of England to direct a writ to the warden of the Fleet, for the delivery of Clarke, that he might attend his duty in parliament; saving harmless the chancellor and warden of the Fleet, and saving to the king, and to Bassett and Payne, their executions against Clarke, to be had after the dissolving that present parliament: to which the king agreed. This therefore was a special act of parliament.

BUT in the 31st and 32d of this reign [f] the commons were not so successful; when a request was made by certain members of the house of commons, pursuant to an order of the whole house, to the king and the lords spiritual and temporal, in behalf of Thomas Thorpe, who was speaker of that house, as well as one of the barristers of the Exchequer, and also of Walter Bayle, another member of that house.

[d] Prynne's 4th Reg. 742.

[e] Ibid. 747.

[f] Ibid. 678, &c.

Thorpe was sued in the Exchequer, by the duke of York, during the vacation of that parliament, for a trespass, committed while the parliament was sitting, against the duke, and the duke obtained judgment against him for 1000*l.* damages and 10*l.* costs, for which he was arrested and imprisoned. The commons prayed that Thorpe, “*par le boon exploit du dit parlement,*” might be enlarged and set at liberty. The lords advised with the justices, whether the said Thorpe ought to be delivered from prison by privilege of parliament. The judges answered, that it did not belong to them to determine about the privileges of parliament; but as for the practice of the lower courts in such cases, if any member of parliament was arrested, and not for treason, felony, or surety of the peace, or for a judgment had before parliament, that then such member should be released from such arrest, and make an attorney, so that he may have liberty to attend upon parliament. But as Thorpe was arrested for a judgment had before parliament, *i. e.* during the vacation of parliament, the lords would not set him at liberty; but obliged the commons to chuse another speaker; which they did accordingly, and the king accepted him.

IN the case of Donne against Walshe, 11 and 12 Edward IV. (Prynne 753) in a writ of privilege, brought by Walshe, it was recited that neither peers nor knights, citizens nor burgeses, coming to parliament, &c. ought to be *arrestari*, aut *implacitari* for any trespass, debt, account, or contract, &c. But Donne denied that there was any such accustomed privilege for commoners as *non implacitari*; and the barons of the Exchequer, upon consulting with all the other judges, adjudged that there was no such privilege, and therefore disallowed the writ.

THE like case with this, mutatis mutandis, was that of Ryver versus Cofyns, 12 Edward IV. The latter brought the same writ of privilege, as being servant to a member of the house of commons, which was in like manner disallowed by the barons of the Exchequer [g]. William Hyde Esq. burges for Chippenham, in 14 Edward IV. Rot. Parl. N^o. 55. was, after his coming to parliament, arrested, by a cap. ad lat. and carried before the justices of the King's Bench, and by them commit-

[g] See Judge Jones and Mr. Noy's opinions against the claim of *non implacitari*. Prynne, *ibid.* 812. 815.

ted to Newgate in execution, for 69*l.* at the suit of John Marshal citizen of Exeter, also for 4*l.* 6*s.* 8*d.* in which he was condemned to Thomas Gay Junior, citizen of London. The commons petition, that, by act of parliament, the chancellor may direct a writ to the sheriffs of London for his enlargement, so that he may attend the parliament, that neither the chancellor nor the sheriffs may be hurt for so doing, and that Taylor and Gay may have their several executions against him after the dissolving this parliament: to which the king consented.

BUT a more particular case than either of the foregoing is that of John Atwyll, citizen in parliament for Exeter, 17 Edward IV [h]. This gentleman was like to have been taken in execution, during the session of parliament, upon which he attended, at the suit of John Taylor, who had obtained judgment against him by default, in eight times twenty pounds: the said John Atwyll daily attending the parliament, and not having any knowledge of the said judgment. Whereupon the commons, in parliament, pray the king in his behalf, that an act of parliament may be made for his security in returning home; and that the barons of the Exchequer may be authorized to issue writs of superseatas of all the writs issued against him; saving to John Taylor his execution of the said judgment, to be had against Atwyll, after the end of this parliament: to which the king agrees. What made this case more observable than any of the preceding ones, was, that the commons in their petition affirm, “that, time out of mind, it has been usual, for the knights of the shires, “citizens of the cities, burghesses of burghes, and barons of the Cinque “Ports, of this your realm, called to any of the parliaments, of your “noble progenitors or yours, among other liberties and franchises, to “have and use this privilege. that any of them should not be empleaded “in any action personal, nor be attached, by their person or goods, in “coming to any such parliament, there abiding, nor from thence to their “proper home resorting; which liberties and franchises your highness, to “your lieges, called, by your authority royal, to this your high court of “parliament, for the cities, burghes, and Cinque Ports, of this realm, “which, by your authority royal, at the commencement of this parlia-

[h] Rot. Parl. No. 35. and Prynn 771.

“ment, you have graciously ratified and confirmed, to us your said commons now assembled, &c.” And the king answered, “le roi le voet.” And yet, on the other hand, there is a saving for John Taylor’s execution against Atwyll, though obtained during the session of parliament and without the said Atwyll’s knowledge, to be had against him after the dissolution of the parliament. This seems as if this judgment and execution was thought valid, and what were not to be vacated.

BUT whatever their sentiments were in that case, this matter has been since more clearly settled, in the remarkable case of George Ferrers, 34 Henry VIII. . This person, having been elected burges for Plimouth, in Devonshire, in going to the parliament house was arrested, in London, by a process out of the King’s Bench, at the suit of one White, for the sum of 200 marks, and carried to the Counter in Breadstreet. Upon notice of this arrest given to Sir Thomas Moile, knight, then speaker of the house of commons, and to the house, it was ordered that their serjeant should go to the Counter, and require the delivery of Ferrers to him, in order to his attending the service of the house. The sheriffs of London encouraged, it is likely, by the judges opinions and the practice of parliament, with regard to executions, not only refused to deliver Ferrers, but maltreated the serjeant. Upon the serjeant’s complaint of this, to the house, they went in a body to the house of lords, who, judging the contempt to be very great, referred the punishment thereof to the order of the commons house. Hereupon the commons sent their serjeant again to the Counter, without any writ or warrant, to demand Ferrers, and to summon the sheriffs, and their clerks and officers, to attend the house of commons; who did so; and, for their contempt, the sheriffs were committed to the Tower of London, their clerks to a little cell there, and their officers to Newgate. After two days confinement there, they were discharged, but not without making humble submission to the house. And in regard, that, in delivery of Ferrers out of execution, he could not be retaken again upon the same judgment, whereby his creditor was without remedy for his debt; therefore they deliberated upon making an act of parliament to revive the execution of the debt against one Welden, who was the principal debtor, and discharge Ferrers of it, who was only
his

his security. Upon this there was a division in that house, which however was carried for Ferrers by fourteen votes.

THE king, being advertised of all this proceeding, called before him immediately the lord chancellor of England, his judges, the speaker of the house of commons, and others of that house; and, having first commended their wisdom in maintaining the privileges of the commons, which he would not have to be infringed in any point, he said that Ferrers only, as he was his majesty's own servant, was intitled to privilege of parliament; and that whatever injury is offered to the meanest member of the house of commons, is to be understood as done against his majesty's person. He said moreover, that the person who sued Ferrers, knowing him to be intitled to privilege, was worthy to have lost his debt: but he commended their equity in giving him remedy against Welden; and this proceeding, says he, may be an example to others not to attempt any thing against the privilege of parliament. Sir Edward Montague, then lord chief justice, confirmed what the king said by divers reasons; however the act did not pass, because the parliament was dissolved before the lords had time to consider of it.

FROM that time forwards, the house of commons has continued to exert the same authority they then assumed, in vindication and maintenance of their privileges, which they have even extended farther than was then allowed. For during the reigns of Mary, Elizabeth, James I, Charles I, Charles II, and James II, there are numerous precedents of their accounting it a breach of privilege, if any subpoena, citation, or other process, without attachment, was served upon any of their members, or their servants: Or if any suit at law was carried on against any of them, the speaker wrote letters to the judges to stay the trials, and committed the suitors against them [i]. In 1 James I, indeed, the commons had a new contest, about their privileges, with the warden of the Fleet, in the case of Sir Thomas Shirley, much of the like nature with that of Ferrers. Sir Thomas, chosen a member, had been arrested four days before the sitting of the parliament; and the house of commons ordered that he should be brought to their house, by a *Habeas Corpus*; but the warden of the Fleet denied to execute it, or

[i] Lex Parliam. p. 386. 391.

to deliver his prisoner: and, persisting in his denial, was committed, by the house, to the Tower; and afterwards to the dungeon there. But, at length, he did deliver Sir Thomas Shirley; and after he had made his submission to the house, and paid his fees, he was discharged [k].

IN vindication of these and the like privileges, the commons have generally used the ready way of sending for offenders, by their serjeant, and committing them to his custody; and obliging them, before their discharge, to pay their fees: to which they have sometimes added fines, more or less, according to the offence. Which proceedings have always proved effectual to maintain the dignity and privilege of that house.

BUT as this great extent of privilege of parliament, which secured both the members of the house of commons and their servants from being at all sued or impleaded at law, as well during the session of parliament as a considerable time after every prorogation, and as much before the re-assembling of parliament, was found to be a grievance to the other people of the nation, by stopping the course of justice, and hindering them from receiving their just debts from members of both houses; hereupon it was provided, by the statute 12 and 13 William III, that any peer, or member of the house of commons, may be sued, in any court of law, after the dissolution or the prorogation of any parliament, till a new one shall meet, or the same shall be re-assembled: and likewise after the adjournment of both houses, for above fourteen days, till they re-assemble. But no peer shall ever be arrested, nor any member of the house of commons during the time of privilege; but they may be prosecuted by distress infinite; and the real and personal estate of the party may be sequestered. And when a member's privilege prevents his being sued, the adverse party shall not be barred by the statute of limitations. But that privilege of parliament shall not take place, at any time, to prevent the king's debtors from being sued; but only to protect them from personal arrests. No member of the house of commons, acting as a public officer, hath any privilege touching the execution of his office [l].

THUS the privilege of parliament is settled, in a manner as little inconvenient as it can well be to the public, and sufficient for the security and

[k] Lex. Parl. p. 395.

[l] Lex. Parl. p. 414. and stat. 1 and 2 Ann. chap. 18.

ease of each member of the commons, in order to his attending the service of the house. And all violations of this privilege of the commons being now punishable, not as formerly, by application from the house of commons to the king and the lords, but by their own sole authority, the safety, freedom, and dignity of that house is effectually secured. And, moreover, the commons have not only a right to determine upon and secure the privileges of their own members, but the rights of their several elections, and of the freeholders and burgeses concerned in electing them; which right is certainly necessary, in order to preserve the freedom and independence of that house. So that they can now, without controul or interruption, resort freely to the house, and when they are there, they can use all the freedom of speech in enquiry, consultation and debate, upon any matter, that is necessary, in order to form laws, for the welfare of the public.

AND though the king and the house of lords have, each of them, a full negative, upon any bills passed in the house of commons, towards being laws, so as that they may reject them even without debate, or giving any reasons for so doing; and when they are thus rejected, the commons cannot offer them again the same session of parliament; yet they may offer them again in any, or in every, future session: and when a thing reasonable in itself, or for the real advantage of the nation, is proposed, and supported properly, by the house of commons, it cannot well be finally quashed. Accordingly it has been, with a great deal of truth, observed, by Lord Coke [m], that good bills or motions, in parliament, have seldom died quite; but, though quashed at one time, have taken effect at another: the crown has, at length, been induced to consent.

If the bills, offered by the commons, do pass the lords and the king, and so become laws, they are no longer liable to suffer any alteration, so as to become, in any respect, different from what they were when the commons passed them. This is an advantage of no small moment, which we derive from the present established form of drawing up and passing bills. Antiently, in making laws, the commons did *Petere*, the lords *Assentire*, and the king *Concludere* [n]. Upon receiving the petitions of

[m] 4th Inst. p. 32.

[n] Selden, Jud. Parl. p. 1639.

the commons, in parliament, the king advised with the house of lords at large, as well as with his own council in parliament. If both these thought fit that they should be granted; they were ordered to be drawn up in due form, by the judges and others of the king's council, and so were read and agreed to, the last day of parliament, and then were repositied among the rolls, and copies of them sent down to the sheriffs of the several counties to be proclaimed as laws.

BUT this method was attended with great inconveniencies, and disadvantage, to the commons; because, after their petitions had in appearance been granted, they seldom found, that, if they had not in reality been disliked by the king or the lords, but opportunity was taken by the council, who were employed in putting them into form, to sink some things, or alter others, that were not to their liking [o]. Thus, 18 Edward III, the commons exhibited a petition against provisions from Rome, which was agreed and assented to, by the king, earls, barons, justices and other sages of the law, that the matters contained in the said petition should be put in a convenient form, according to the prayer of the commons [p]; and yet no statute at all was made thereupon. Upon this and the like practices, 22 Edward III, the commons insisted that their petitions, in parliament, might be answered according to reason, and the answers to remain in force, without being changed or altered [q]. But notwithstanding this, in 25 Edward III. N^o. 59. cap 3, there were added, in that statute, two special clauses, for the clergy, which were not in the king's answer [r].

IN 5 Richard II. cap. 1, both the printed statute, and the roll of parliament, N^o. 17, say, that the commons consented to a law then made against heretics: but the next session the commons denied that they ever gave such consent [s]. “Que il ne fust unques assentu ne grante par les communes, mes ce que fust parlé de ce, fust sans assent de lour.” And therefore they pray, “que celuy estatut soit annienti [t].” To which the king's answer is, “y plect au roy.” So that this act was assented to by the

[o] See Petyt. Inst. Parl. p. 1. and Cott. Abr. p. 159. art. 56.

[p] Rot. Parl. 18 Edward III.

N^o. 32. 39.

[q] See Cott. Abr. p. 71. and Brady's Edward III. p. 245.

[r] Philips, on

the Govern. of Eng. p. 538, 539.

[s] Sir Edward Coke's 3d Inst. p. 41.

[t] Rot. Parl.

6 Richard II. N^o. 52.

king and lords, but not by the commons. The means how it came to be reputed an act of parliament, says Lord Coke [u], was this: Braibroke bishop of London, being then lord chancellor of England, caused the said ordinance of the king and lords to be inserted into the parliamentary writ of proclamation, under the great seal, and to be proclaimed, by the sheriffs, among the acts of parliament. Lord Coke had seen the writ, an extract of which he there gives [w]. "But in the parliamentary proclamation of the act passed 6 Richard II, the said act of 6 Richard II, whereby the said supposed act 5 Richard II was thought to be void, is omitted: and afterwards the said supposed act 5 Richard II was continually printed, and the said act of 6 Richard II hath, by the prelates, been, from time to time, kept from the print."

BUT Doctor Gibson, bishop of London, (Codex, p. 400.) observes, with regard to this, 1st, That the words "it is ordained and assented in parliament," were not a peculiar sort of language used, on purpose, as Lord Coke thinks, because the commons had not assented; but were a form commonly used in those times, when acts had been agreed to, by king, lords, and commons.

2^{dly}, THE same learned bishop proceeds to say, It appears not, by the record, that the statute, 5 Richard II, was so passed by the king and lords, as that the commons knew nothing of it; but their complaint is, that they never assented thereunto; which, if meant of a formal assent, might at that time be a disputable point, whether they assented or not, considering that, in those days, the commons were not such a distinct and separate body, as they have been since: and it is not pretended that the statute was inserted notwithstanding the dissent of the commons.

3^{dly}, As to the crime of not inserting the statute of Richard II, before that was charged, it ought to have appeared that this had the assent of the lords more than the other had of the commons. Nothing is alleged for the repeal, but a representation from the commons, and the assent of the king; so that we may justly presume that the reason why the lord chancellor did not insert it in the parliamentary roll was, because the lords assented not to the repeal, as knowing that 5 Richard II was duly and regularly passed.

[u] Inst. 4. p. 51.

[w] Inst. 3. p. 41.

4^{thly}, CONSIDERING the public manner in which acts of parliament were proclaimed, in every county, is it credible, either that this omission, of 6 Richard II, had it been found, could have escaped the commons? or if such a fraud had been discovered, that it would not have been complained of, in the parliament, which met the very next year?

5^{thly}, THAT very statute, 5 RICHARD II, which the commons are said not to have assented to, is expressly termed a statute, and mentioned as such, without the least mark of suspicion, by three subsequent statutes, viz. 25 Henry VIII, cap. 14. sect. 1. 1 Edward VI, cap. 12. sect. 3. and 1 and 2 Philip and Mary, cap. 6. Thus far Bishop Gibson. But Bishop Burnet [x] is of the same mind with Lord Coke, and speaks of Bishop Braibroke as being guilty of *piæ fraudes*, to support the corruption of the then church.

HOWEVER this matter was, the commons found reason to beseech the king [y] that the business done, and to be done, in this parliament, be enacted and engrossed before the departure of the justices; and while they have it in their memory; which implied that they apprehended some omissions or alterations. To which it was answered, that the clerk of parliament should do his endeavour to enact and engross the substance of the proceedings in parliament, by advice of the justices, and after shew it to the king and lords, in parliament, to have their advice: but, by the bye, there is no mention of shewing it to the commons. However the commons, probably still finding cause for complaint, in 7 and 8 Henry IV, N^o. 65, through their speaker, prayed the king and the lords in parliament, that certain of the lords spiritual and temporal, whom it pleased them to appoint, and a certain number of the commons, whose names the speaker had written in a schedule, or any 10, 9, 8, 7, or 6, of them, might be at the enacting and engrossing of the rolls of parliament; and that their prayer and petition might be of record in the roll of parliament. Which request the king graciously assented to. But even after that, 2 Henry V, N^o. 110, the commons still found reason to put the king in mind, that the statute ought not to be drawn up contrary to the meaning of the petitions that were then granted. And soon afterwards they

[x] Hist. Reformer. vol. i. p. 21.

[y] Rot. Parl. 2 Henry IV. N^o. 21.

themselves

themselves formed their bills into the form of a statute, which order continueth to this day.

MR. Glanville, a member of the house of commons, at a conference with the lords, 4 Car. I. 1628, gives much such an account as is here before given, and adds, "that ever since 2 Henry V, the right hath been, "that the king taketh the whole, or leaveth the whole, of the bills or "petitions." At present, therefore, no changes but what the commons, and in like manner the lords, have approved, can be made in the bills that are at present to be passed into laws.

BUT farther, when any bills have been passed into laws, the king hath then no authority to dispense with them, *i. e.* to suspend their force, or hinder their execution. This authority our kings formerly exercised, and even claimed it as a legal part of their prerogative. In several cases wherein laws were made for the benefit of the public, to restrain the subjects from doing things to its disadvantage; or to oblige them to do things for its profit; yet our kings took the liberty to dispense with particular persons from conforming to statutes of both these kinds. For instance, there was a law to prohibit all persons from transporting wool to any place beyond the seas, but only to Calais; but the king, Edward III, notwithstanding this act, granted licenses to several persons to carry wool to other ports. And, by another act, Gascoigne wines, and other foreign goods, were prohibited to be imported into this kingdom, but in English ships: which was a profitable law for the increase of the navy, &c. But the king gave license to such particular persons as he thought fit, to practise the contrary [z]. Nor were these proceedings much to be wondered at in princes, who naturally desire to enlarge their authority. Henry III was the first, that we find, practised it in England, in imitation of the popes, who had taken upon them some time before to dispense with the canons of the church, by a clause of non obstante [a]. But it is much to be wondered at, that judges learned in the laws, and sworn to observe them, should ever, as they did, come solemnly to declare and adjudge, that such an authority to dispense with acts of parliament, clearly positive, belonged, by prerogative, to the kings of this realm; and was ever inseparable from

[z] See other instances in Sir Robert Atkynson's *Dispensing Power*, p. 13. *Eccles. Cases*, vol. i. chap. 3. p. 126.

[a] See Bishop Stillingf.

them.

them. In 2 Richard II, all the judges resolved that the king might dispense with the law concerning Gascoigne wines imported [b].

AFTER which, we are not to be surprized at what happened, in the reign of the same prince, in regard to several statutes against luxury in apparel, &c. "*Sed quid juvant statuta parliamentorum,*" says Walsingham (p. 281.) "*cum penitus ex post nullum fortiantur effectum.* Rex "*namque cum privato concilio cuncta mutare vel delere solebat quæ, in* "*parliamentis ante habitis, tota regni non solum communitas sed et ipsa* "*nobilitas statuebat.*" By several antient statutes, as 14 Edward III. cap. 7. 28 Edward III. cap. 7. 42 Edward III. cap. 9. and 1 Richard II. cap. 11. it was made unlawful for a sheriff of a county to hold office for more than one year, because of the great inconveniencies and mischiefs that followed upon it. And these statutes not proving effectual to hinder this practice, the statute 26 Henry VI. cap. 8. not only orders these statutes to be observed, but lays a penalty of 200*l.* upon any person, who should hold that office longer than a year; and expressly declares, that all patents granted by the king, with the clause of non obstante to those statutes, should be null and void.

AND yet, notwithstanding this statute, all the judges of England did, in the Exchequer-chamber, in 2 Henry VII, resolve, and adjudge, that the king might grant a patent, with a clause of non obstante, for the holding a sheriff's office for more than a year, and that such a patent would be good in law. And these judges, and succeeding lawyers, asserted this prerogative to the crown, upon a pretended maxim in law, which might extend itself to multitudes of other cases. They said, indeed, that the king could not dispense with statutes which concerned *malum in se*; but he might do so in any which concerned only *malum prohibitum*; *i. e.* those which forbade things, which, if they had not been prohibited by statute, would have been lawful, or indifferent in their own nature. Now as most of the things about which civil laws are made are of this indifferent nature, it is visible what a prodigious extent this doctrine gave to the royal prerogative [c].

UPON this and some other as weak foundations, the prerogative of dispensing with penal laws was determined to be in the crown, by all the

[b] Atkyns, p. 13.

[c] Stillingsf. Eccles. Cases, vol. ii. p. 151.

judges, in the Exchequer-chamber, in the time of James I [d]. And these notions of the lawyers, and determinations of the judges, prevailed so far in the nation, that though they were plainly contrary to the anti-ent acknowledged frame of our constitution, which always vested the legislative power, not in the king alone, but in him jointly with the lords and commons, and also contrary to several acts of parliament, which were made to grant the authority of dispensing to some of our kings, upon particular occasions, and only for a time certain, which acts plainly implied that the crown had not this authority in itself; else why was it given to it by parliament [e]? yet, by degrees, they influenced even the members of the legislature itself.

FOR in the parliament, 3 Charles I, 23d May 1628, Mr. Glanville delivered to the lords the general sense of the house of commons in these words: "When statutes are made to prohibit, not mala in se, but only
" mala quia prohibita, under certain penalties to accrue to the king, and
" to the informers that shall sue for the breach of them; the commons
" must, and ever will, acknowledge a regal and sovereign prerogative
" in the king, touching such statutes, that it is in his majesty's absolute
" and undoubted power to grant dispensations, to particular persons,
" with the clause of non obstante, to do as they might have done before
" those statutes [f]."

WE see here that such a power was generally acknowledged to be vested in the crown, over some acts of parliament, as might, by parity of reason, be extended to many others: indeed, such a power as the acts of the whole legislature could not bind. Which was, in effect, laying open the greatest part of our constitution to the mercy of the crown. Of which acknowledged legal power, it is easy to conceive what advantage might have been taken in length of time, by artful management on the part of the crown. But, happily for our constitution, King James II, by applying this prerogative to indemnify persons who offended against the test act of 25 Car. II, was the occasion of its being blown up, and quite set aside; though James did not want the opinions and other

[d] See Coke's Reports.
Coll. part i. p. 571.

[e] See Observ. on Eccles. Jurisd. p. 53. 56.

[f] Rushw.

endeavours of the lawyers, and even of the chief justices, to give a sanction to his illegal practices.

THE very important consequences that were visibly likely to follow, upon allowing the prerogative in that case, induced people to consider with attention upon what grounds it stood, and made them see through the clouds which the lawyers had formerly wrapt it up in; so that though the great Jefferies, Sir Thomas Herbert, chief justice of the common pleas, and many other sages of the law, declared that King James II had a prerogative of dispensing with the test, as a penal law, by a parity of reason to what had several times been adjudged to be legal in other cases, yet the generality of the people were by no means satisfied with their resolution; they were generally persuaded that no act of the whole legislature can be suspended or set aside by the king alone, who is but one member of it. And accordingly in the first and second articles of the declaration of rights, in 1 William and Mary, it was affirmed, that the pretended power of suspending laws, or the execution of laws, by illegal authority, without consent of parliament, is illegal, and particularly as those powers have been exercised of late. And, in the same year, session 2. cap, 2. it is enacted, that no dispensation by non obstante of or to any statute, or part thereof, shall be allowed; but the same shall be held void, and of none effect, except a dispensation is allowed in such statute. So that, since that time, it is fully settled, as an unquestionable truth, that the king cannot dispense with an act of parliament; and consequently the surety of the people's enjoying the effects of good laws, once made, is sufficiently established.

THE house of commons can also take care that the laws be duly executed, by complaining of any persons in office, either ecclesiastical, civil, or military, who do not do their duty, or are guilty of corruption, or use their power in any way to the oppression of the subjects. No person but the king himself is exempt from their censure. They can animadvert upon the conduct of any other person, either lord or commoner, even the greatest minister; and can command any public records or papers to be made use of in evidence against him. They can oblige any commoner whatever to appear at their bar, and can imprison him, for the time of their own session, if they think proper, in order to oblige him to give evidence against others; and though they

cannot examine upon oath, yet, by such imprisonment, they can punish apparent prevarication. And though this last branch of their power does not extend to any member of the house of peers, who are not obliged to appear at their bar, or give evidence there, nor their house liable to be searched, or their private papers seized, by their officers, yet they can impeach any person, whether lord or commoner, at the bar of the house of lords: and in case of impeachment for treason, or any other crime that deserves it, they can demand that the party be committed to safe custody, by the house of lords.

THEY have at all times a right of access to the king, to acquaint him with any matters they think proper for him to know. The king's pardon cannot be pleaded in bar to an impeachment of the house of commons, in any case. This was a point long ago thought necessary to the public welfare, in order to make ministers act with caution; for in 50 Edward III, the commons petitioned the king, "that no man, great or small, who had acted against his allegiance and oath to the king, and was impeached in that parliament, or in any other parliament to come, should be pardoned: and that a law should be made for that purpose." But notwithstanding, the power of pardoning, in bar to an impeachment of the commons, remained long in the crown. It was exercised remarkably, by Charles II, in the case of Lord Danby, in order to prevent some illegal and bad transactions, that had passed in that reign with foreign courts, from being brought to light. But now, by 12 and 13 William III. chap. 2. sect. 3. the king's pardon shall not be pleaded to an impeachment of the house of commons.

THE peers cannot give judgment upon a person impeached by the commons unless they demand it: and if they do, judgment cannot be refused. So that they are sure of either obtaining a censure upon persons criminal, or, at least, of opening and exposing their crimes, in a judicial way, to the notice of the world. And, indeed, the weight of the commons will always be, as it has been, so great, as well as the justice of the house of lords so constant, that it can hardly ever happen that a criminal justly impeached by them, how great soever he be, can escape a just condemnation. So that in all deliberations and actions of ministers of state, the principal point should be (as Charles II once said it was with him) to consider what a parliament will think of them.

S E C T. IV.

Of the Number of small Burghs which send Members to Parliament, and the Means used to obviate that and other Inconveniencies.

FROM what has been said, it is evident, that the house of commons is possessed of all, or at least of the most important, powers and privileges necessary in a representative of the people at large: and, if there be yet some disadvantages and defects remaining in our constitution, perhaps they are not so great as they may, at first sight, be thought. Monsieur Rapin de Thoyras [g] looked upon it to be a considerable defect in our constitution, that the matters to be treated of, in parliament, are not expressed in the summons, as King John promised they should, and that the members of our house of commons have not instructions about them, from the people whom they represent; or, if any such instructions be given to them, that they are at liberty not to observe them. The matter of fact indeed is true: our members of parliament are not, by law, obliged either to consult those who have chosen them, nor to have any regard to their instructions, farther than they themselves judge them to be reasonable; for, though a man is chosen by a particular county or burgh, he is, in law, reputed to serve for the whole kingdom [h]. But as these things could not be ordered otherwise, as the state of our nation is at present, so some persons are far from thinking, with Mr. Rapin, that these are circumstances of any disadvantage in our constitution.

FOR I/, it would be impracticable for the king to express, in his summons, all the things that are to be treated in parliament; because any member of either house of parliament is at liberty to propose, and ask leave of the house to bring in, any bill that he thinks proper, which he may keep secret to himself till the time of parliament, though it really may be of great importance. In Queen Elizabeth's time, a bill was proposed to limit the succession of the crown; and, in Charles the Second's time, a bill was proposed for taking from the crown the power of creating any more new peerages than a certain number. These, and many other

[g] Dissert. sur les Whigs et Tories, p. 246. vol. x.

[h] Coke's 4th Inst. p. 14.

bills of the utmost importance, have been, and may be, first proposed by private persons : moreover they may have a design to call to an account, or to impeach, ministers of state, &c.

2dly, It would be often impolitic in the king to make public, before hand, what laws, or other matters, he designed to propose : I mean so as to specify what supplies of money would be needful for the service of the next year, or what wars, or alliances, he designed to make, or several other matters of that nature ; because, by so doing, he would give foreigners, his enemies, an opportunity to know, or guess at, his councils soon enough to provide against and defeat them.

At the same time, even supposing that the matters to be treated of were specified, the people would not be able to give sufficient or proper instructions to their representatives, as to matters of this nature ; because, not knowing the circumstances of things abroad and at home, being neither acquainted with the designs nor the dispositions, nor the powers of foreign parts, they cannot judge truly of what measures are to be taken with regard to them. Nor would they be able to judge competently of several laws that might be proposed to be made even with regard to our constitution at home. Things of this sort depend frequently upon the knowing and balancing abundance of particulars, which can only be known to those who have the inspection, for instance, of the custom-house accounts, the state of the imports and exports, the produce of the several parts of the nation, the state of their manufactures, their different conditions, and the alterations likely to be in each as to popularity and wealth, the dispositions of the people as to religion and as to loyalty, their circumstances as to quartering and subsisting of troops, and a great variety of other things, which must be exactly known and weighed, before any man could judge aright, whether a law for levying money, in this or that way ; whether a law for allowing, encouraging, or forbidding this or that branch of traffic ; whether a law for admitting any of the subjects to this or that privilege, religious or civil ; whether a law for retrenching this or that branch of the prerogative of the crown, or adding to it in any other instance ; whether, I say, any laws of these, or the like kinds, would be really expedient, and for the public welfare or not.

If

IF the king was to declare, in his summons to parliament, that he intended to propose any things of this nature in parliament, it would be hardly possible for persons in the country, or even in London, to judge rightly of the matter immediately: the greatest natural sagacity or prudence, without having a due knowledge of circumstances, or proper materials on which to form a judgment, would be unable to do it aright. And not being capable of judging well for themselves, it is not possible that they should duly instruct their representatives. If these should be obliged to conform to instructions given upon such imperfect views of things, the public must necessarily suffer by it.

WHEREAS, on the other hand, by the representatives being at liberty to follow their own judgment, in parliament, they have this great advantage, that, by the right of the house of commons to demand any public papers, from the offices of customs, excise, accounts, &c. relating to the state of the nation, and to apply to the king for others, and from the great light to be had by the mutual informations which such numbers of gentlemen, coming together from all parts of the nation, may give to each other; from the various views of things that may arise from their debates and reasonings, and examinations of evidence in the house, a member of good sense, integrity, and attention, may have very great advantages for forming his judgment, probably much otherwise than his constituents would have done in the country, from their own knowledge of things only; and therefore it must be much for the advantage of the public, that he should be at liberty so to do. It would be a great inconvenience if he should be confined to act according to their judgments, who have had but narrow and partial, or probably, in many cases, false, views and accounts of things.

If members were under this obligation, there would be two ill consequences, in particular, very likely to happen, 1st, There might be, in several cases, combinations between some parts of the nation, for the advantage of their counties or parts of the kingdom, in preference to others. “The members who serve for one part of the kingdom are frequently found in opposition to the representatives of another, for the sake only of particular interest in their own counties [i].”

[i] Fletcher of Salton's Works, p. 408.

The members of the west might sometimes be against those of the northern parts; or they both might be, as probably they would in case an alteration in the method of assessing the land-tax was proposed, in opposition to the members of the midland counties. This disposition has sometimes appeared, and probably would be much more, if the persons who serve for the burghs in those counties were tied down to follow the prejudices and partialities of their constituents. Whereas, being at liberty to vote as they judge best, they may be more easily drawn to take that course which is most for the general interest of the whole.

2dly, AN obligation upon the members to follow the instructions of their constituents, would give too much power into the hands of the lower classes of people of this nation, who might not use it well: or at least, it would encourage and foment such a democratical spirit in them, as would, by degrees, weaken and destroy the essential balance of power in our constitution.

It was found, by experience, to be a defect in most of the republics, and popular states of antiquity, that they allowed the people at large to have deliberate voices in matters of this nature. They were frequently influenced by their demagogues, and their own want of judgment, to very rash and imprudent measures. Pericles indeed, flatteringly, told the Athenians, that each private person understood public affairs very well; but experience shewed the contrary: and the most judicious politicians, even of their own countrymen, complained of it. Polybius [k] blames the Athenian and Theban governments; for that in them *Ὁχλῳ χειρίζεται τὰ ἔλλα*. The same author observes [l], that, at the time of the second Punic war, the constitution of the republic of Carthage was impaired and corrupted: for with them “*plurimam populus sibi auctoritatem vindicaverat, quæ apud Romanos, illibata penes senatum, adhuc erat. Quo factum ut illic, populo de rebus omnibus consultante, hic, civium optimo quoque, Romani vicerint.*”

[k] Lib. vi. p. 488.

[l] Ibid. p. 494.

TULLY observes, that “ Græcorum totæ respUBLICÆ sedendis concionis
 “ temeritate administrantur. Itaque ut hanc Græciam, quæ jam diu
 “ suis consiliis afflicta est, omittam: illa vetus, quæ quondam opibus,
 “ imperio, gloriâ floruit, hoc uno malo concidit, libertate immoderata
 “ ac licentiâ concionum [m].”

It was therefore a right provision in all the constitutions of the Gothic model, that these inconveniencies were avoided, by leaving only the choice of representatives to the people, out of themselves; but, at the same time, investing them, when once chosen, with a discretionary power, to act as they thought fit, within the established bounds of the constitution; that is, so as not to give up any point, or make any alteration, that would have an effect or tendency destructive to its welfare. This is at once a temperament against the too great vehemence of the people, and a guard against their unskilfulness and want of judgment; at the same time that it serves to keep up a spirit of liberty in them, and, in a great measure, secures them against the ill management of their representatives: since, if they do not approve their conduct in parliament, they may, after a short time, lay them aside, and send other persons more likely to serve them well.

As to this nation, in particular, we see by the times of Richard II and Edward VI, when the populace got a-head, what work they would probably have made, had they then been to instruct their representatives, and had these been obliged to follow them. In the reign of Charles I, we see what instructions the lower classes of people actually gave to their representatives, as far as they could do it by petitioning the house of commons. It might justly be expected that some things of the like sort would be done, on other occasions, if the right of the people, in the counties and burghs, to instruct their representatives, and to oblige them, was once fully established.

It is an objection much more plausible, which Monsieur Rapin makes to that number of small burghs, in England, which send members to parliament, and are, each of them, represented by two persons, as well as any of the counties, or the largest cities, except London.

[m] Orat. pro. Flacco, sect. 7.

He says this disproportion in the representatives, to the number and wealth of the persons represented, is wrong in itself: and lays the choice of members of parliament much more open to the influence of the crown, than it would be if these small burghs were disfranchized, and the several greater towns were justly represented, according to their number and their wealth. How far this objection is really of weight, I shall presently consider, after I have first observed how things came into this state.

Now this inequality hath arisen partly from the change of condition of some towns; which, having formerly been considerable for their numbers of people and their wealth, are, by length of time, fallen much to decay: such are Gatton in Surry, Old Sarum in Wiltshire, and others. But it has indeed been owing much more to the practices of the crown since the beginning of the sixteenth century after Christ. From Edward the First's reign, to the end of that of Edward IV, there were only one hundred and seventy members sent to parliament from all the cities and burghs in England. Mr. Brown Willis [n] says, that, in the year 1546, there were only one hundred and twenty-six burghs that returned members to parliament: of which there were few but what were considerable for people and wealth. But in Edward the Sixth's reign, and so downwards, for the two following reigns, the importance of the house of commons being more and more found, the crown, or its ministers, caused several more burghs to be summoned, of which some had never sent any members before, nor were they considerable for the numbers of their people, or for their wealth; but they were such as the crown could hope to influence, and therefore they were summoned when several larger and more considerable towns were omitted. The weight and interest which the court had, at that time, in the house of commons, got these new members to be received and admitted there; though there seems to have been, at first, some question made, whether they ought to be admitted, or not?

IN 23 Elizabeth, the attorney and solicitor general consented to a committee of the house of commons, appointed to confer with them,

[n] Notit. Parliam. vol. i. p. 8. pref.

that those burgesſes who were returned for divers burghs, which did not return any burgesſes laſt parliament, ſhould remain in the houſe, according to their returns, that the validity of their charters might be examined [o]. In Edward the Sixth's reign, twenty-three new burghs were ſummoned to ſend burgesſes to parliament. Philip and Mary added thirteen more. Elizabeth added thirty. James added the two univerſities, and twelve burghs. Charles I added eight burghs. And Charles II added the county of Durham and two burghs.

ACCORDING to our antient conſtitution, the king might incorporate any town, and enable them to ſend burgesſes to parliament; but this part of the prerogative, of increaſing the number of burgesſes of parliament, has been given up by our late kings: for if the king, at preſent, was to make a new parliamentary burgh, it would reſt in the power of the houſe of commons whether they would receive the members. And the iſſuing of quo warrantos out of the court of Kings Bench, the court of Exchequer, or any other court, againſt burghs, that antiently or recently ſent burgesſes to parliament, to ſhew cauſe why they ſent burgesſes to parliament, and all the proceedings thereupon, are, coram non judice, illegal and void: and the right of ſending burgesſes to parliament is unqueſtionable in parliament only; and the occaſioners, procurers, and judges, in ſuch quo warrantos and proceedings, are puniſhable, as in parliament ſhall be thought conſonant to law and juſtice [p].

THE burghs added, during the reign of king James I, were not all added by the king's deſire. Several of them, particularly Agmondesham, Wendover, and Great Marlow, were added, againſt the king's inclinations, by the houſe of commons, in the parliament, 21 James I, upon a petition made from thoſe burghs to the houſe, that they had antiently ſent members to parliament, and deſired to be reſtored to that privilege. The king, who declared himſelf unwilling to have the number of burgesſes increaſed, ſaying he was troubled with too great a number already, commanded his ſolicitor general, Sir Robert Heath, then in the houſe of commons, to oppoſe it what he might; but it being alledged on the behalf of the burghs, that the interruption in their ſending burgesſes,

[o] See Prynne's Parl. Regiſt. part iv. p. 1179. [p] Nalſon, p. 533.

for four hundred years past, was not owing to their own neglect, but to the fault of the sheriffs; or if it was owing, in any measure, to the burghs themselves, it was because their predecessors were poor, and unable to maintain their members; whereas, now, they were content to undergo that charge. That if some burghs might be thus suffered to be discharged from their parliamentary service; by a parity of reason, others might be so likewise; and consequently there might come to be no parliament for want of burgessees. Lastly, that these were parliament burghs by prescription, and not by charter: for every one of them had their several forens [q]; and paid fifteenths as all parliamentary burghs, and not as other burghs or towns. Upon which reasons, the house of commons voted them to be revived, and made returning burghs: and the king, having taken the two chief justices opinions that it was just, did, at length, consent to it.

THE house of commons, in being forward to regrant this right to these and other burghs, seemed to have thought that their doing it would be strengthening the liberty of the nation; and, by making the house of commons more numerous, render it less dependant on the crown. But in this they certainly did not judge right: it has been found on the contrary, that many of the smallest burghs have been the most liable to be influenced, and often have fallen into the most scandalous corruption. This appeared to such a degree in some of them, that in the case of Stockbridge in Hampshire, the house of commons, finding that burgh notoriously guilty of bribery, in their electing members of parliament, had a design to disfranchise it: and, A. D. 1701, also to have made an act for enlarging some others of the lesser burghs, by admitting a competent number of neighbouring freeholders to vote in them. But the bills, that were brought into the house of commons for that purpose, were dropt [r]. Innovations and changes of that sort probably were thought dangerous, and not to be ventured upon, without great necessity, in such a constitution as this. And there does not seem to be as yet any necessity of this sort: for though undoubtedly the condition

[q] Forens is the outlying part of the parish, belonging to the burgh. Brown Willis, vol. i. p. 149.

[r] The bill for disfranchizing Stockbridge, as to sending members to parliament, was brought into the house of commons, January 8 1693, and continued there till April 1699, when it was thrown out.

of the small burghs is not such as one could wish it to be; yet there are several circumstances, in the case of our nation at present, that render it less inconvenient than it may at first sight appear.

ONE of these circumstances is the liberty which all our burghs, small as well as great, have at present, by custom, of chusing *non resiants* to represent them in parliament. By an act of parliament, 1 Henry V. cap. 1. it is enacted, that each person serving for a burgh or city should be resiant, abiding, and free of the said city or burgh, and none other in any wise. This is explained in 23 Henry VI. cap. 15, that the burgessees chosen to come to parliament shall themselves be resiant, dwelling and abiding. And by the lists of members that remain, it seems that, for a considerable time, the members for cities and burghs were really resiant and members of the communities, and were a low kind of men, being several of them traders.

If these statutes had continued to be strictly observed, they might have been of ill consequence, as they would have confined the choice of persons, for representatives of many burghs, to those who were not equal to that great trust, by reason of the lowness of their condition, want of knowledge in affairs, &c. but at present, though those statutes are unrepealed, yet they are so little regarded, that persons from any part of England are capable of being chosen for any cities or burghs. By which means the smallest burghs are often represented by men of the greatest estate and ability in the whole house of commons, even by the eldest sons of peers. This last circumstance has been fully allowed and settled only since Edward the Sixth's time; and it has been thought a disadvantage to have so many of the noble families in the house of commons, but it certainly is much otherwise; for, as I have observed above, it is of great moment to the welfare of the whole constitution, that the house of peers should preserve a due weight in it, as well as the house of commons. Now this proper weight is very much lessened by the decrease of many of the peers estates, and the dependances that they had antiently belonging to them: therefore, in order to make up this, in some measure, it is very expedient that the relations and eldest sons of peers should have seats in the house of commons: which circumstance tends to enlarge the weight of the upper house, promotes a good understanding

ing between the two houses, and prevents the commons from encroaching upon the peers.

AND that no city or burgh can be represented by any persons of very low circumstances, is provided by the statute 9 Ann. cap. 5, which enacts that no person shall serve in parliament, for any city or burgh, but who hath 300*l.* per annum in freehold or copyhold lands, over and above what will satisfy all incumbrances; unless he be the eldest son of a peer, or of a person who himself hath at least 600*l.* per annum in freehold or copyhold land beyond reprises; which last reserve is the qualification necessary in order to serve for knight of a shire. And it is at the same time enacted, that each candidate may be obliged to take an oath, affirming that he hath such an estate, and to shew where it lies. By these means all members of parliament must be men of some competent fortune: and, indeed, few are of so little as 300*l.* per annum, for most persons of that estate have also more lands or money besides.

THE second provision that makes the inconveniencies of small burghs in our constitution more supportable, is the care that is taken by several statutes, to prevent undue practices, and especially corruption, in the choice of members of parliament. Monsieur Rapin de Thoyras observes, that the smallness of the burghs lays them more open to the influence of the crown. This is not universally true; for many, even the greatest number, of the small burghs are so much under the influence of gentlemen of great estates and quality, that they are less liable to be influenced by the crown than several of the larger burghs. Indeed some of them are intirely in the power of those gentlemen, because the votes depend upon inhabiting houses in the burgh, which houses are the estate of those gentlemen. Indeed this is not quite so agreeable to the original design of our constitution; but it is of no ill effect: for it is only putting those gentlemen upon a more advantageous foot than others, by securing to them seats in the lower house. And as they are mostly gentlemen of very large estates, they are as little liable to be influenced by the crown, and as much able to serve their country, as the members chosen by counties or large burghs. Others indeed of the smaller burghs do lye more open to the influence of the crown, on account of the poverty of their voters. But influence of this sort, upon their elections, is

is much more restrained than it formerly was, both by the alterations that time has made, and by various statutes provided for that purpose.

THE crown had formerly the tenures, the fee-farms, and the forests; by which it could distress the electors in many places. The warden of the Cinque Ports claimed a right to nominate one member in each of those ports. The sheriffs could, with impunity, neglect some burghs, and return whom they pleased for others. The king and the lords, and in aftertimes the chancellor, had an authority to judge of contested elections, and to issue new writs upon them [s]. Now all these things are altered; the tenures, the fee-farms, and the forests, in a great measure, as to their influence, are gone. The warden of the Cinque Ports claim is taken away. The elections are to be free. No custom or excise officer, or the like, can interpose their authority. No money, place, pension, or promise of any such, can be given to corrupt the voters. The sheriff is under great penalties if he makes false returns. The king's, the lords and the chancellor's authority, as to judging of contested elections, or double returns, is taken away; so that, supposing the laws be duly observed, there cannot be much influence applied from any quarter.

BUT perhaps it may be asked, Is it supposable, in this age, that the laws will be observed? have they been so, in any degree, since the Restoration? have not the courts, at all times, been able to gain parliaments? are they not likely to do the same for the future? and if they do, can our parliaments be said to be any thing more than bare form, or name? I do confess that these things have been said, in strong terms, by some foreign writers, and lately more insisted upon than ever by some of our own. There are those who think that, if things continue to go in this train, the freedom of our constitution will be wholly lost, or rendered in a great measure insignificant. How far these consequences are with reason to be apprehended, I shall consider hereafter. In the mean time, I must observe, that it is justly to be accounted a happy situation, that our constitution is established as well as it is, considering the many difficulties our ancestors had to contend with.

[s] See Prynne's pref. to Cott. Abr. 28.

OUR kings formerly took the liberty, in their proclamations for parliaments, to direct what sort of men should be chosen in them. Henry IV, in his first year, A. D. 1404, summoned a parliament to meet at Coventry, and directed the sheriffs that no members should be returned who knew any thing of law [t]. And before the election of the parliament in 1603, in the beginning of the reign of James I, a proclamation came forth, directing the electors what sort of men they should return members, and the sheriffs to what burgh they should omit sending precepts, under the peril of the king's heavy displeasure [u]. The crown formerly could, upon many occasions, declare the charters of burghs forfeited; and even so late as the reigns of Charles and James II, the crown got many charters surrendered, upon the most frivolous pretences; in order to give new ones, with powers that might enable them to pack parliaments. But now those quo warrantos, which they used for that purpose, are declared to be illegal; so that the crown has no such room to tamper with them.

THE only influence the crown has at present, must be, either by money, or by hopes of employments, or in general by views of interest in the electors. And there are various acts of parliament in force against employing these, to corrupt these electors. By 7 William III. cap. 7. no person shall, after the teste of the writ, give any money, gift, or promise, or obligation, to any one for his vote, on pain of being rendered incapable to sit in parliament. By an act 2 George II, every elector is to swear, that he hath not received, by himself, or by any other person in trust for him, or for his use or benefit, directly or indirectly, any sum of money, office, place, employment, gift, or reward, or any security for such, to give his vote. If any person be required to take this oath, and shall vote without doing so, he shall forfeit 100/. And to prevent the court's undue influence upon members, after they are in the house, it is enacted, 4 Ann. cap. 8. that no person having any new office of trust or benefit under the crown, as commissioners for prizes, or for transports, agents for regiments, &c. shall be capable of being chosen a member of the house of commons. By 1 George I. cap. 56. no person having

[t] Royal Treasury, p. 139.

[u] Atterbury on Convoc. p. 423.

a pension.

a pension from the crown, for any term or number of years, either in his own name or in trust for him, is capable of being a member of the house of commons: and if any person, who shall have such a pension at the time of his election, or at any time after, shall sit and vote in the house, he shall forfeit 20*l.* for every time he sits and votes.

FROM these numerous and strict provisions, it is evident, that, if the laws in force be duly observed, there can hardly be a possibility that parliaments should be influenced to do any thing contrary to the welfare and real interest of the nation. And as the nobility and gentry of England are possessed of such a share of the legislature, with so many great and uncontestable privileges, they have it entirely in their own power, if they are not greatly wanting to themselves, to preserve their liberty against any attempts that may be made against it. While they are in parliament, they may, if they will, be independent, and serve their country without being under any corrupt influence, or any terror. Now for a people to be in such circumstances at present, to have a parliament so fenced with laws and privileges, must, with reason, be accounted a great degree of happiness.

ACCORDINGLY it has been acknowledged so to be, by several French writers; who, at the same time, regret the loss of the meeting of their estates. Thus Bodin: “*quinetiam illi ipsi, quos Hispani curias, Angli*
 “*parliamenta vocant, aboleri cupiunt, urgentibus periculis, ad conventus,*
 “*velut ad sacram anchoram, confugiunt, ut seipsos remque publicam ab*
 “*hostibus tueantur. Ubi enim melius de curandis reipublicæ morbis, de*
 “*jubendis legibus, de statu conformando, quam apud principem, in se-*
 “*natu, coram populo agi potest? illic querelæ tenuiorum, illic potento-*
 “*rum injuriæ, illic furta, peculatus, sordes, quæ sæpius, ignaro principe,*
 “*fiunt, explicantur. Illic ordinis cujusque rationes exaudiuntur. Quam-*
 “*obrem sapienter ab Anglis et Hispanis institutum est, siquidem illud*
 “*teneremus, populi conventus tertio quoque anno haberi. Et ut princeps*
 “*libentius id faceret, nullum imperari tributum poterat nisi populi con-*
 “*ventus habeatur. Nostri reges non ita sæpe ut Angli comitia cogunt.*
 “*Sed cum sexdecim provinciæ in hoc imperio numerantur, sex habent*
 “*sua peculiaria quædam comitia: quæ ut omnino tollerentur modis om-*
 “*nibus tentatum est ab iis qui sua scelera et peculatus pervulgari me-*
 “*tuunt.*

“ tuunt. Ut etiam Carolo VIII imperium ineunte, cum universa provin-
 “ cia conventus haberi oportere unâ voce conclamaretur, non defuerint qui
 “ majestatis crimen ingererent iis qui in senatu cum populo idem senti-
 “ rent. Quibus acerrime restitit Philippus Cominius rerum gerenda-
 “ rum usu clarissimus senator. Sed quam sint necessaria totius populi
 “ concilia, ex eo perspicitur, quod quibus populis sua concilia cogere licet,
 “ cum iis optime agitur [a].”

AND Mathurellus laments the loss of the authority of the parliament of Paris, which was but a shadow of the antient states. “ Utinam au-
 “ gustissimi illius senatus auctoritas tam illibata atque inconcussa foret, ut
 “ fuit antiquis temporibus: certe melius nobiscum ageretur [b].”

BUT here perhaps it may be asked, how it happened that the French, and, in like manner, the Spaniards, and not only they, but the Danes and the Swedes, who antiently were as free as we, and who had all originally public constitutions, but little different from ours in England, came, at length, quite to lose them, and fall under arbitrary government; while we, on the other hand, have gone on improving our constitution; so that it is at this hour much better than it ever was in former times? Now, in the first place, this change ought, certainly, to be ascribed to the providence of God. But as the Supreme Being, at present, acts generally by second causes; there were, no doubt, some causes of this kind, that produced these similar events, in a number of different kingdoms; and what these causes were, I shall, in the following sheets, endeavour to make appear.

[a] Bodin. lib. iii. p. 346.

[b] Mathurellus Resp. ad Hotomani Franco Gall, p. 154.

TRACT III.

Of the Means whereby the Free Constitutions of other Nations have been impaired, while that of England has been preserved, and improved.

SECTION I.

The Divisions and Animosities between the Nobility and the Commonalty were the chief Cause, which made several European Nations lose their Liberty.

AFTER I have thus vindicated the lawfulness, and shewn the advantages, of our present constitution, beyond all others in Europe, many may, perhaps, have the curiosity to enquire, how our constitution came to be thus preserved, and improved, while others, which at first were much the same as ours, have been changed much for the worse, and have, in a great measure, lost their original liberty? Now this, under God, I take to have been owing to the different circumstances that the commons of England were in from those of most other nations in Europe, and their better agreement with the nobility: for this difference of circumstances both disposed and enabled them to do more for preserving our original constitution, than the common people of other nations either could, or were ever disposed to do.

BUT, in order to comprehend clearly the force of this reason, I must make some farther enlargement upon it; and must observe, in the first place, that, in the constitutions of the Gothic model, the power that was to serve as a barrier against the encroachments of the crown was lodged chiefly in the nobility: which word I do not now use in that limited sense in which it is commonly understood in England; but mean by it, as it is used in other countries, to include all those who are possessed of land, held by military, or other free and honourable tenure, and have a right to bear arms, in token of their genteel extraction, in opposition to the trading, mechanic, and labouring part of the people.

It is evident, that, in the several kingdoms that were formed upon the ruins of the Roman empire, the nobles, in this large sense, were possessed of all, or far the greatest part of the lands, except those that were in the crown and the church. And from thence, by the nature of their tenures, they had such bands of attachment to each other, as well as such means of attaching the peasants and mechanics to them, that it was not hard for them to make such combinations as would give them a force superior to that of the crown itself. Each kingdom had a small number of great men, possessed of very large territories or fiefdoms, held by them immediately of the crown, which they parcelled out into less divisions, and granted to their tenants, to be held of themselves, by like military and other services, as they were obliged to render to the crown. These tenures obliged them to appear in the field, with horse and arms, at the summons of their lords, and to continue there so long as custom or the law required: and as every such under-tenant could, by making good bargains of farms, &c. oblige and attach some lower people to him, and so of course to the chief tenant; accordingly it came to pass, that most of those great lords could raise, at their pleasure, numerous bodies of men, whom, by keeping large armories and great stables of horses, they could, upon a very small notice, equip for war.

AND when several of these great nobles joined together, they were capable of making a stand against the crown, when assisted only by its own peculiar tenants, *i. e.* by the forces it could raise from its own domains; it is true, the crown was intitled to the military service of all those great barons that held lands of it, when a foreign expedition was to be made; and in home rebellions, it was intitled to the service of all men in the nation: and it had generally some of them in its party in civil wars. But if its cause was notoriously bad, and tending to subvert the constitution, there were generally enough of these barons who would make a stand, and unite to preserve it.

THIS state of things continued in the European kingdoms, from their first establishment, upon the ruin of the Roman empire, for several centuries [c]: and it might have continued longer, if several events had not happened, to produce alterations in the way of living, and of making

[c] See Count Boul. Hist. vol. iii. p. 145.

war. Not but that otherwise these constitutions must have gradually decayed, because length of time, forfeiture of the tenants, and the failure of families, could not but occasion the splitting into lesser parcels and subdivisions, those estates in land; which subdivisions must needs have lessened the power of the noblesse considered as a body: because combinations among them, in opposition to the crown, must become much more difficult as their numbers increased, and so dissensions would more easily and frequently spring up among them. Though, on the other hand, the power of the crown must also grow less, by degrees, from the alienation that would naturally be made of crown lands, rents, &c.

BUT the growth of trade in Europe, by the discovery of America, and by finding a new and easier way to the East-Indies by the Cape of Good Hope, events which both happened nearly together, about A. D. 1494, and the great plenty of money arising in Europe from the wealth brought from thence, were the causes that contributed very much to hasten the decay of the feudal constitutions. For trade introducing wealth, introduced also luxury, and an expensive way of living among all, but especially the trading people yet more, in order to keep up the dignity of their rank among the noblesse.

AND the greater the quantity of money grew, the revenues of their estates sunk in proportion; because most of them had before agreed to take their rents in certain payments of money, which were now become less considerable [d]. So that they could no longer make the same figure, or preserve the same weight and influence, which they had formerly; but were like old trees, that were decaying, and afforded little fruit or shelter, while the underwood about them was very thriving.

BUT probably it may be thought that this change in the circumstances of the noblesse and body of the people, might not have contributed much to the strengthening of the crown, if the noblesse and commonalty could have acted in concert with each other, and if the latter had been in a proper disposition to assert their liberties; because the force, in opposition to the crown, would have been the same, or greater than it was, though placed in somewhat different hands; and the strength of the

[d] See Count Boul. tom. iii. p. 145. of the decay of the value of feudal estates.

crown would, at the same time, have increased, by the sinking of its chief-rents and fee-farm-rents, and by the alienation of its demesne lands. Indeed this would have been so, could the nobility and commons have preserved a good correspondence with each other.

BUT I must observe, that the condition of the mass of the people was so low and servile, and they had been so used by the nobles, that, in process of time, they had contracted such resentments against the noblesse, that they were, from thence, both indisposed and unable to take due measures for preserving their liberty against the crown. The commonalty, indeed, in several of these kingdoms, consisted originally, for the most part, of the natives, whom the conquerors subdued; or at least they were part of the scum of those victorious armies, to whom the officers and others of distinction, who had the lands, and became the noblesse, committed the management of those lands, as to the laborious part; allowing them for their labour just enough to live upon, but keeping them very poor, and with drudgery and ill usage so depressing their spirits, that they could never aspire to any part of the concerns of the public, nor even to intermarry with the gentry, and so, by alliance, or increase of fortune, raise themselves into their body.

SUCH was the case of the commons in France and Spain, Germany, Poland, and indeed in most other nations of Europe, in which the arms of the northern nations prevailed and made settlements. These nations, whose taste was chiefly for hunting and war, regarded husbandry, trade, and mechanic employments, as unworthy of them; and accordingly despised the merchants and artificers, as well as the peasants: upon all occasions using them with an oppressive insolence, that was as provoking as it was unjust.

IN consequence of this usage, it could hardly be otherwise than that the body of the people should contract, and always keep up, some resentments against the noblesse, and conceive themselves to have a different interest from them. And these resentments proved sufficient to hinder them from acting in concert with each other, and so gave able ministers, of the several crowns, opportunities of managing the noblesse, and the people, one against the other, till each crown got possessed of such a power as made it too hard for them both; whereby even the noblesse themselves

were

were brought under the same servile yoke which they had laid and kept on the commonalty.

S E C T. II.

Of France and Spain.

THIS was remarkably the case in France, in the reign of King John, about A. D. 1356, which was one of the most favourable junctures for putting the constitution of that kingdom upon a good foot of liberty. For two centuries before that time, the commons of that kingdom, especially those in cities and towns, had been getting, by slow degrees, out of that servitude, which they were originally under, to the crown and to the nobles. “Sous Louis le Gros, A. D. 1108, on com-
“mence d’affranchir les grosses villes; c’est à dire, accorder à leurs habi-
“tants en general chartres de liberté, et des coutumes accompagnées de
“la remise du droit d’imposer des tailles à volonté; de celui de la morte
“taille, par où l’on consentoit que les enfans succedassent à leurs peres
“en héritages et en meubles: et enfin de la remise du droit de fuite, qui
“paroïssoit le plus important, en ce qu’il mettoit les hommes en liberté de
“choisir un autre nomicile [e].” This freedom consisted in their having a community, a power to chuse officers, to exercise trade, &c. [f].

THEY could not come into this condition without the consent of the crown and of their mesne lords. “Les habitans de Vezelay avoient pris
“la liberté de faire une commune sans le consentement de l’abbé seigneur
“du lieu, et sans lettres du roi. Louis le Jeune, A. D. 1161, s’y transf-
“porta, et les soumit en peu de temps.” But many, and at last most of the lords sold these liberties to their towns for large sums of money. “Louis
“Hutin, A. D. 1314, donna une ordonnance pour l’affranchissement de
“tous les serfs qui ressoient encore en France; mais pas sans finance à son
“profit.” This ordonnance, however, was not executed, either because of the shortness of that prince’s life, or because of the opposition which the barons gave to it.

[e] Boul. tom. iii. p. 39.

[f] See Alteferra upon the Jus Communiæ.

“ ENFIN Hen. III, se croyant dans une conjecture plus favorable, ac-
 “ corda de nouvelles lettres à tous les mains mortables du royaume, pour
 “ recevoir leurs affranchisements, au moyen d’une mediocre finance ; mais
 “ le Marechall Daumont, et plusieurs autres seigneurs du Berry, s’étant
 “ pareillement opposez à l’effect de ces lettres, elles sont pareillement de-
 “ meurées sans exécution [g].” By degrees, however, by the time of
 Philip the fair, so great a part of the middle and lower sort of people in
 France had gotten their liberty, and, in pursuance of it, had so much
 wealth or substance among them, that Philip, as the most expedient way
 of raising money without too much discontenting his people, thought pro-
 per to call a general assembly of the estates ; and, with the clergy and no-
 bility, who were, from the beginning, members of the estates or great
 councils, to admit also the deputies of the cities and rural districts, as
 members of that assembly ; that they might give their consent to the mo-
 ney that was to be raised upon them. This was done in the general as-
 sembly of the three estates in A. D. 1313. And several of the succes-
 sors of Philip the Fair continued the same course ; and even, in a great
 degree, allowed that the estates had a right to be consulted, when money
 was to be raised.

“ LES Normans, dans le tems de Philippe de Valois, A. D. 1328,
 “ obtinrent enfin la confirmation de la Chartre de Louis Hutin, avec
 “ une declaration expresse, qu’il ne seroit jamais permis de rien imposer
 “ à la province, sans le consentement des etates. Et Nicolas Gilles, et
 “ le Rosier de France, disent positivement, qu’en cette année 1338, il fut
 “ arrêté et conclu devant les trois etats de France, present le roi, Phillippe
 “ Valois, que l’on ne pourroit imposer ni lever tailles, en France, sur le peu-
 “ ple, si urgente necessité, où evident utilité ne le requeroit de octroy des gens
 “ desetats [h].” So that, if things had been well managed, and with due con-
 cert, on the part of the nobility and people, this great point, for the secur-
 ing the liberty of that nation, might at length have been effectually gain-
 ed from the crown ; especially after the loss of the battle of Poitiers,
 in the time of King John, A. D. 1356, and during the following cap-
 tivity of that prince. At that time the Dauphin, who was lieutenant of

[g] Count Boul. tom iii. p. 50.

[h] Ibid. p. 99.

the kingdom, found himself under a necessity of having a general convention of the three estates in October 1356; and Count Boulainvillers says [i], “ Que le plus grand nombre des deputies qui se rendirent à l’assemblée, y portèrent un dessein formé de travailler par preference à la reformation du government, et à resserer l’autorité despotique, qui n’avoit servi qu’à perdue le royaume, et le roi même.” They even began to take measures for that purpose: they formed a committee for grievances, who drew up a remonstrance about them, which they presented to the Dauphin, the lieutenant and guardian of the realm; and he made an ordinance agreeable to their requests; which, if it had been put in due execution, and continued in force, would have laid a sure foundation for the liberty of the French nation [k].

BUT that politic prince, the Dauphin, soon found a way entirely to defeat all these measures of the estates, and even to make them lose, in a good measure, their credit with the nation; which was by setting the nobility and the third estate at variance. “ Les états se rassemblèrent, au mois de Janvier de la même année, sans que l’ordre de la noblesse y voulut paroître, non plus qu’à ceux qui furent tenus au mois de Febrier suivant, C’etoit un effect de la politique du Dauphin, qui regagna la noblesse par toute sorte des caresses, pendant qu’il mettoit sourdement les villes en defiance contre elle, en leur faissant représenter, qu’il n’y avoit qu’il l’autorité royale qui pût contenir la violence à laquelle elle étoit accoutumée: il reussit si bien dans ses insinuations, que les villes et la noblesse negligerent également de s’unir et agir de concert pour le bien commun. On ne fut pas long tems apres cela à voir l’effect des insinuations faites au peuple contre la noblesse: car tout à coup les communes de Picardie, de Vermandois, et de l’Isle de France, commencerent à s’attrouper, et dans l’idée que la noblesse n’étoit bonne à rien, où qu’elle n’étoit pas fidele au roi où au regent, ils firent main basse sous tous les gentils hommes qu’elles purent surprendre dans leur chateaux, avec des cruautés incroyables, jusqu’à faire rotir un chevalier à la broche, et à contraindre sa femme et ses filles à manger sa chair.

[i] Boul. tom. iii. p. 110.

[k] Ibid. p. 113.

“ LE regent n'avoit pas eû, fans dout, l'intention de pouffer les choses
 “ si loin, et auffi fut il obligée de se servir de la noblesse même pour repri-
 “ mer ce furieux mouvement. Il en coûta la vie a une infinité des villa-
 “ geois, qui furent tuez, et affommez comme des betes, n'ayant aucunes
 “ arms ni art pour se defendre. Cependant les seditions continuant
 “ toujours dans la ville de Paris, il s'en fit à la fin un si considerable,
 “ qu'elle rétablit l'autorité de regent, par la mort du prevôt des mer-
 “ chands, et de divers autres qui pour avoir voulu porter trop loin l'in-
 “ dependance et la liberté, firent perdre au public les avantages de leurs
 “ enterprises [1].”

MEZERAY says, that from this time we may date the end of the
 mixed government, which had continued, more or less, in France,
 from the beginning of the monarchy. He means the authority there
 was in the noblesse to be some check upon the crown. “ Ce qui ar-
 “ riva (dit Count Boul.) tant par le degout que l'on pris des violences
 “ populaires, qui l'on regardoit mal à propos comme l'effet des resolutions
 “ des derniers etats; que parce que, la guerre ayant encore continué
 “ plus de 80 ans, l'autorité royale prit insensiblement le dessus par l'obli-
 “ des droits des particuliers, qui demeuroient sans exercice au milieu de
 “ la confusion, et du desordre d'une guerre, qui pénétra dans toutes les
 “ parties du royaume.”

MEZERAY [m], speaking of the state of things in Paris and the rest of
 France, during the captivity of King John, says, “ pendant cette anar-
 “ chie, la noblesse et les autres gents de guerre exerçoient toutes sortes de
 “ violence sur les pauvres peuples de la campagne. Ces malheureux
 “ batus, pillés, courus comme des bestes sauvages, n'ayant la plupart
 “ pour retraite que les cavernes, et les marés. Ils s'attrouperent par
 “ grandes bandes, et se resolurent d'exterminer tous les gentilhommes.
 “ Cette fureur comença dans le Beauvoisis, et eut pour premier chef
 “ un payfan nommé Caillet. On la nomma la Jocquerie, parce que
 “ les gentilhommes, lors qu'ils pilloient le payfan, l'appelloient par
 “ raillerie Jacques bon homme. Si les villes se fussent jointes à ces
 “ rustres, c'étoit fait de la noblesse et de l'estat monarchique, aussi bien

[1] Count Boul. tom. iii. p. 117.

[m] Tom. ii. p. 565.

“qu'en Suisse; mais pas une ne leur ouvrit leur portes de crainte
 “d'estre pillé. Ils en tenterent plusieurs inutilement; mais du reste
 “ils commirent tant de cruauté plus que brutales, que la noblesse de
 “tous les partis, François, Anglois, et Navarrois, se rallia contre eux.
 “Le roy de Navarre defit la troupe de Caillet. Le Dauphin en mit
 “en pieces plus que vingt mille.”

Soon after, in 1358, “le Navarrois s'approcha de Paris; et harangua
 “le peuple qui le declara son general; mais la noblesse, indignée de
 “voir qu'il la caressoit moins que le bourgeoisie, l'abandonna, et dans
 “une assemblée qui fut tenuë à Compeigne, promit toute assistance au
 “Dauphin pour assieger Paris.” This encouraged the Dauphin's party,
 in the city of Paris so much that it got the upper hand; and so
 they drove out and punished the popular party with great severity, and
 entirely established the authority of the crown.

In the reign of Charles VI, A. D. 1382, there were found at the taking
 of Courtray, in Flanders, says Mezeray [n], “certaines lettres des
 “Parisiens, faisant mention d'une ligue des villes de France avec celles
 “de Flandres, pour l'extinction generale de la noblesse. En effet, de-
 “puis que le roy estoit sorti de France, les bourgeois des villes de Paris,
 “de Rouen, de Troyes, d'Orleans, et plusieurs autres, avoient pris les
 “armes à l'occasion des impôts; tellement que les princes et les grands
 “qui cherchoient à profiter des rançonnements et des confiscations,
 “ayant facilement persuadé au roy, soit qu'il fut vray où non, que les
 “peuples avoient conspiré contre la royauté, ce jeune prince, par leur
 “conseil, chastia rigoureusement ces villes par le mort de grand nombre
 “des gents par proscriptions, revocations de privileges, et taxes ex-
 “cessives.”

The Parisians came out with 30,000 men to meet the king, Charles VI,
 1383, to shew their strength; but, at the word of command, they
 dispersed, and went home; and the king entered their city like a conqueror,
 took down their gates, took away their arms, and hanged, drowned,
 or beheaded a great number of them; and exacted of the rest more than
 one half of their goods: “puis dans cette terreur on reestablit les impôts,

[n] Abr. tom. ii. p. 610.

“ et on les leva avec des extortions indicibles. On traita les autres villes
 “ de même ; et ces grandes sommes tournerent presque toutes au profit
 “ de la noblesse, qui les dissipant aussitôt en folles dépenses, justifioit en
 “ quelque sort les emotions que l’on chastioit si horriblement [o].”

IN the year 1384, “ Il s’en étoit encore soulevé d’autres payfans, aussi
 “ cruels que ceux de la Jacquerie, qui couroient le Poitou, le Berry, et
 “ l’Auvergne, et tuoient inhumainement tous ceux qu’ils trouvoient
 “ n’avoir pas les mains calleuses ; on les nommoit les Tuchins. Le
 “ duc de Berry assembla des troupes, les dissipa et fit mourir leurs chiefs
 “ avec plusieurs de ces rustres.” During the continuance of the reign
 of Charles VI, from the year 1401 to 1407, when the duke of Orleans
 was assassinated by the duke of Burgundy, and from thenceforth du-
 ring all that reign, France was in very great disorder and confusion ;
 and in the year 1413, Mezeray says, that the nobility, and those who
 had the care of the revenue, were rather desirous of a continuation of
 the troubles, that they might feast themselves upon the spoils of the peo-
 ple ; and the courtiers, and those who were about the Dauphin, then
 but sixteen years of age, bred him up in all the notions of absolute power,
 “ et lui mirent dans l’esprit que pour maitriser absolument France, il
 “ falloit dompter Paris et disarmer les bourgeois, lesquels il taxeroit après
 “ comme il luy plairoit.” Pursuant to this advice, the Dauphin imme-
 diately seized the bastille ; which so enraged the citizens of Paris, that they
 immediately rose in arms, to the amount of 10,000, forced the Dauphin’s
 officers from him and imprisoned them, and behaved themselves with
 great insolence both to him and to the king (Charles VI), and obliged
 them to consent to the putting to death several persons of the Dauphin’s
 friends.

IN 1418, the Burgundian faction got the better at Paris, and made
 most terrible work with the opposite party of the Armagnacs or Orlea-
 nois ; putting near 3000 of them to the sword. “ Quiconque avoit de
 “ l’argent où un ennemy, un office où un benefice, étoit Armagnac.”
 From A. D. 1401, to 1451, there were continual disorders, ravages, and
 a state of almost perpetual confusion and anarchy in France ; first be-

[o] Mezeray, Abr. tom. ii. p. 611.

tween the factions of Orleans and Burgundy, and afterwards between the French and English; the latter of whom were not quite driven out of France till 1451, when they had nothing left them but Calais and the county of Guisnes [p]. In 1444, Charles VII formed some standing troops in France: they consisted of 1500 gens d'armes, 4500 archers on horseback, and as many inferior soldiers or valets. Their pay, or maintenance, according to Count Boulainvillers, was to be raised from the towns where they were in garrison and the neighbouring country; though the people afterwards consented, unthinkingly, to contribute settled sums for this purpose. "Le peuple, dit Mezeray, tom. ii. p. 699, qui ne sent que le mal present et qui ne veut point pre-
 "voir ceux de l'avenir, ne songea qu'à se liberer de ce fardeau, et octroya
 "une taille d'argent pour le payement de ces gens d'armes, sans confide-
 "rer que lors que'elle seroit une fois establie, elle ne dépendroit plus
 "de luy, ny pour la durée, ny pour l'augmentation."

IN 1448, "Il y avoit peu d'infanterie en France; le roi (Charles VII)
 "pour en avoir une bonne et bien entretenue, ordonna que chaque
 "village du royaume luyourniroit et payeroit un archer à pied qui
 "seroit franc de toutes tailles et subfides. A cause de quoi on les nom-
 "ma les Francs archers. Cela faisoit un corp de vingt-deux, ou
 "vingt-trois mille hommes [q]." This prince was not only the first who formed standing armies in France, but, according to all the historians of that nation, was the first who gained that point of laying taxes upon the country at his pleasure, without the consent of the estates of the kingdom; but, in fact, he could not have carried his point, if he had not consented to grant certain pensions to great numbers of the nobility, in lieu of what should be levied upon them.

IN the year 1465, in the beginning of the reign of Lewis IX, most of the princes of the blood, a great number of the nobility, and the old captains of the late king, entered into a confederacy for the reformation of the state, which was called the league for the public good. The dukes of Burgundy, Bretagne, and Charles the king's brother, were in it. The king, on the other hand, cajoles the burgeoises at Paris,

[p] Mezeray, tom. ii. p. 705.

[q] Ibid. p. 700.

and their husbands, by promising an abatement of taxes, and promises to govern by the council of six of the parliament, six of the university, and six of the citizens: this made the city stand firm to him, though some were much inclined to the princes. Mezeray [r], speaking of that which was called the league for the public good in the reign of Lewis XI, says "le public, qui avoit servy de couleur à cette guerre, et
" qui en avoit porté tous les frais, n'en eut aucun avantage."

IN 1466, this prince, says Mezeray, "amusoit le peuple d'un espoir
" de soulagement, ayant convoqué à Paris une assemblée de notables,
" où il s'y fit, sans doute, plus de propositions qu'il n'en executer, et
" des discours fort estudiez: c'est ce qu'en France ils appellent de belle
" actions. Paris etant comme le fort du roy contre les grandes, qui ne
" l'aymoient point." He made a review of them, towards the end of this year, and found between 70,000 and 80,000 men, fit to bear arms, between 16 and 60 years of age. In 1480, Lewis XI, says Mezeray, "soit qu'il ne se fiait point à ses sujets naturels, ou pour quelque
" autre raison, cassa les Franks archers, et en leur place leva des troupes
" estrangeres, specialement des Suisses." But this prince, a little before his death, was so well convinced of the unhappy situation of his kingdom, and of the misery to which he had reduced his subjects, that he exhorted his son, Charles VIII, "à reduire les levées des deniers à l'an-
" cien ordre du royaume, qui estoit de n'en point faire sans l'octroy
" des peuples [s]."

IN 1484, 2 Charles VIII, there was an assembly of the estates at Tours; and, says Mezeray, "On n'eut jamais si beau de reformer les
" abus, et de dresser des remparts contre l'oppression. Mais le presi-
" dent des etats, plusieurs ecclesiastiques, les deputez de Paris, et quel-
" ques autres, se laisserent emporter au vent de la cour, et trahirent la
" cause publique."

DURING the reign of Lewis XII, who came to the crown in 1498, and died in 1515, France had no reason to complain of the abuse of the authority of the crown, as to impositions. But Francis I, who in 1515 succeeded Lewis XII, by the advice of the Chancellor Du Prat, was put

[r] Mezeray, tom. ii. p. 712.

[s] Tom. iii. p. 751.

upon selling justice; by creating (says Mezeray [t]) a new chamber of twenty counsellors of the parliament of Paris, and as many in the other chambers in proportion; and as well upon augmenting the tailles, and making new imposts, “sans attendre l'octroy des états, comme c'estoit l'ordre ancien du royaume.” And the same author, speaking of the concordat, between this prince and the pope, made the following year, says, “le clergé de France, les universitez, les parlements, et tous les gens de bien, y opposerent plaintes, remonstrances, protestations, appels au future concile. Toute fois au bout de deux ans, il falut céder à l'autorité absolue, et enregistrer le concordat au parlement. In 1543, Francois I, fit un impôt sur les villes closes, pour l'entretien de 50,000 hommes; qui ne cessa point avec la guerre, comme il avoit promis.” In fact, the ministers of this prince broke through all the ancient laws of France, “et poufferent l'autorité du roy jusque à une domination disreglée [u].”

THE succeeding princes all kept up this absolute power, more or less, according to their capacity, and other circumstances: but, in general, Henry IV, Lewis XIII, and Lewis XIV, brought it to perfection. However, it is somewhat wonderful, that, in the reign of Henry III, when the violences of the league were carried to such a height, even against the person of the king avowedly, and when the deposing doctrines were publicly taught, the leaguers did not fall upon any measures to restrain the absolute power of the crown: indeed there was some talk of doing this in the estates at Blois, in 1588; and the Huguenots were in the same disposition. But nothing was done, either then or afterwards, by the leaguers in Paris, to this purpose. The duke of Mayenne, their chief, “considerant que l'esprit des auteurs de cette grande revolution tendoit à établir plutôt un democratie qu'une royauté, travailla d'abord à diminuer leur puissance [w].” And one may conclude that little of this sort could have been done with any effect, by the accounts we have of the state of the parties in France, at the beginning of Henry the Fourth's reign. Mezeray tells us, that, among other parties, there was one party “de gens trop amoureux

[t] Mezeray, tom. ii. p. 833.

[u] Tom. ii. p. 932.

[w] Tom. iii. p. 1199.

“ de la liberté qui tendoient à establier un government dans lequel l’au-
 “ torité absoluë fust restraite par des loix. Cette partie ne subsista
 “ pas long tems, toutes les autres, quoy qu’enemies entre elles, conspi-
 “ rant à la rendre odieux et à la destruire.”

AND afterward, during the minority of Lewis XIV, when the prin-
 ces and the parliament of Paris were united against cardinal Mazerine,
 and went great lengths against the court, yet nothing was done effec-
 tually, or hardly suffered to be proposed, that tended to promote the
 liberty of the people, or restrain the power of the crown: the princes
 of the blood and the great lords opposed every thing of this sort [x].
 This has generally been, and is, the disposition of most of the noblesse:
 great numbers of them are very much reduced in their fortunes; but
 their high spirit, their love of expensive living, and their contempt and
 hatred of the merchants and trading people, still remain; they know
 that the crown only can support them, to some degree, in their dignity,
 as in effect it does, by giving them places at court, commands in the
 army, governments, and other places; and, at the same time, by shewing
 a superior respect to them and their families.

THEY know, that, if there were more freedom in France, it would
 turn to the advantage of the trading and lower classes of the people;
 therefore they will always be generally disposed to adhere to the crown,
 and assist it against the efforts of the middling people, between whom
 and them there still continues no small hatred; as was seen, in some
 measure, towards the latter end of the last century. Sir William
 Temple [y] gives us an account of a great insurrection in Britany;
 which, by the rage it begun with, might have proved of ill consequence
 to the French affairs, if it had met with a head answerable to it. But
 being only composed of the lower classes of people, who, from the
 oppression and ill usage they had sustained, hated and spoiled the no-
 blesse, it was, partly by fair means and partly by foul, in a little time
 composed.

THE nobility therefore will always be for the crown; and so will
 the clergy: whom the crown politicly hindered from having their

[x] See Mem. de Retz, tom. i. p. 163. 176. 180. [y] Mem. p. 38.

wings clipt at the Reformation, and do still support them, as knowing they are likely to adhere to the royal prerogative: and the king will have a constant influence upon them, by the concordat, which gives the crown the nomination of benefices. Moreover the clergy will always influence the low people, and keep up, as they really do at present, a great spirit of veneration for their king. And there is so much of this now settled among all orders of men in France, that, as the king is at present absolute to what degree he pleases, so that power seems to be fixed upon as firm a foundation as in any country in Europe, even as in Spain itself.

THE change of the constitution, and loss of the liberties of Spain, were produced by much the same causes as they were in France. The nobility and gentry, in the former of these kingdoms, had been all along possessed of great privileges and immunities, particularly that great one of having their estates freed from taxes, in consideration of their doing personal service to the public, in war. In A. D. 1176, Alphonsus king of Castile, besieging Cuenea, and wanting money, “*cura-*
“*tumque ut non modo plebei homines et proletarii, sed etiam ingenui*
“*et immunes, quas vulgo Hispani Hidalgos vocant, quotannis quinos*
“*maravedinos aureos regio fisco inferrent. Populum tot vectigalibus*
“*exhaustum belli sumptibus imparem esse. Debere eos patriæ caritate,*
“*ærarîi inopia moveri ut de veteri libertate jureque confiderent. Di-*
“*daci conatibus, Petrus de Laræ obfistendum existimans, contractâ no-*
“*bilium manu, raptim è conventu discessit, armis tueri certus partam*
“*armis et virtute a majoribus immunitatem [z].*” The king was forced to desist; many of the greater nobility had their estates, and the dependences upon them, very large. About the middle of the fourteenth century, in the time of Henry II, who was a bastard, and advanced to the throne instead of Peter the cruel; and in the time of Henry’s successors, the nobility got their privileges, estates, and jurisdictions much enlarged [a]. And Marian, lib. xvii. p. 710, says, “*a novo re-*
“*ge (Henric.) pro cujusque autoritate dona principibus data oppida,*
“*arces, principatus: et in ea rerum perturbatione novus rex, quasi de*

[z] Marian. p. 536. [a] Puffend. Introduc. p. 49.

“ alieno munificus videri volebat.” The same author says, that, in the year 1390, in the reign of King John of Castile, the nobles would not agree to the king’s request, nor consent to be taxed. And, about the year 1393, in the minority of Henry III, or just when he became a major, he says, that “ datum est Cantabris expetentibus Castellæ exemplo
“ (nondum enim mos ille sublatu erat) provocandi jus ad singulare cer-
“ tamen, Marte arbitro, controversias quæ multæ in ea gente erant dis-
“ judicandi [b].”

IN the assembly of estates at Madrid, in A. D. 1394, and in the beginning of the reign of Henry III, the pensions and other grants of Henry II were resumed; which highly vexed the grandees, and disposed them to make commotions. “ Beneventanus Madrito digressus in regia
“ vectigalia ipsosque templorum redditus invadere non desistebat, regis
“ ætatem ludibrio habens [c].” This shews what power the grandees then had. The king (Henry III) went into Castile, “ ad pacandos pro-
“ cerum animos; qui, depulso belli timore, in miserorum fortunas gras-
“ sabantur [d].” But the king was obliged to give two or three of them large pensions.

IN Arragon, in A. D. 1406, the estates resolved “ Martinum regis
“ filium primo quoque tempore in Hispaniam evocandum; ut homini-
“ bus maxime liberis, jus à natura datum, virtute, meritis, fide, fœdere,
“ ac religione fundatum disceret conservare [e].” In the beginning of the reign of Henry III, the king had been out a hunting, and at his return, hungry, found nothing in his palace for dinner. The master of the household told him, that there was neither money nor credit left to buy provisions for the royal household: and the king was obliged to pawn his cloke for a piece of mutton. But, at the same time, a number of the grandees used to have sumptuous entertainments for each other, in their turns: it happened to be, that night, the archbishop of Toledo’s turn. The king went thither in disguise, and found there great magnificence and plenty. After supper, when the grandees were merry, they began telling each other, how much every one had out of the royal revenues, which filled the king with astonishment; and the

[b] Marian. p. 755.

[c] Ibid. p. 756.

[d] Ibid. p. 757.

[e] Ibid. p. 768.

very next day he surprized and threatened them, and obliged them to give up the royal castles and territories which they possessed, and to pay all that they had taken of the royal revenues [f].

IN the reign of King John II, which begun A. D. 1407, and lasted till 1453, the kingdom of Castile was all along much troubled, with the divisions and commotions of the grandees, against Alvaro de Lunæ, the king's favorite, and against the king for protecting him. During this reign, the power of the grandees must have been much increased; for, in 1439, the grandees of Castile formed a league against Alvaro de Lunæ, and gained their point against him, for a time, notwithstanding the king's authority. In 1449, the city of Toledo, upon occasion of a small tax that was to be raised upon them by Alvaro de Lunæ, revolted against the king; and when he came before the town, they used him with great insolence; and those citizens who were distrusted by the rest were used with great cruelty.

HENRY IV began to reign in Castile, in 1453, and died in 1471. In his reign, there was not a year passed without great disturbances. The king was impotent, and, in order to have children, he caused Bertrand de Cuera, count of Ledesmo, to lye with his queen, of whom he got the princess Joanna: but, to exclude this princess from the succession, the grandees form a conspiracy, depose Henry from the crown, and proclaim his brother Alphonfus king; who soon after dies. But Henry's sister Isabella was married to prince Ferdinand of Arragon; who succeeds Henry after his death. The grandees of Castile, and even the citizens, treat Henry with great insolence and dishonour. "A conjuratis proceribus ingens facinus designatum." In A. D. 1465, "horret animus tantam nostræ gentis ignominiam recordari. Pro Abulæ moenibus in patenti campo suggestum ex materia ædificatum est, imposita Henrici statua, cum trabeâ, reliquoque regio ornatu. Convenere procures infinitaque populi multitudo. Voce præconis, gravissima Henrici crimina publicata. Ad singula sententiæ capita, statua figillatim omnibus regiis insignibus nudata, ac tandem cum verborum contumelia in præceps est data [g]." Hereupon Henry raises troops; but, not being able to do

[f] Marian. p. 769.

[g] Ibid. lib. xxiii. cap. 10. p. 69.

any thing, is forced to come to an accommodation with the malecontent grandees; who, by raising troops and making disturbances, not only obtain, from the weak king, what posts and other advantages they pleased, but even impose dishonourable terms upon him, and reduce him to great distress. They offer the crown to his sister Isabella, who refuses it, but is appointed successor to Henry.

AFTER Henry's death, Isabella, and, in her right, her husband Ferdinand king of Arragon, succeeded. This king hastened immediately into Castile, as knowing, says Marian. lib. xxiv. p. 92. that "Castellæ proceres sine et opera venali nisi magnis præmiis perfituri in officia non erant." Ferdinand had much to do to quiet and reduce the proceres of Castile, "reliquis castellæ partibus quiescentibus, motus in Bætica extabant. Proceres pro se quisque urbes arcesque præfidiis occupare: ut cujusque vires erant; prædæ, rempublicam, ludibrio majestatem habere [h]." Marian. tells us, in the sequel of the same chapter, that, notwithstanding the vigilance of this king, the grandees seized several considerable places, and even the citizens were divided into parties, and raising tumults. In 1481, "sub Ferdinando et Isabella, Toleti generalis conventus agitati omnino frequentes. Voces liberæ fuerunt, et plenæ expostulationum: nobiles in tenuiorum fortunas grassari populi conquerebantur. Eorum avaritia regium ærarium exhaustum, occupata vectigalia, imperari nova indies magnæ provinciæ calamitate. Remedium excogitatum dati in causâ judices, ab Henrico rege factas imprudenter donationes, aut temporum necessitate extortas, injustas fore pronunciarunt. Nobilium audacia coerceri nondum poterat, neque judicia restitui magnopere labefactata [i]." Marian. farther informs us, that the nobility of Portugal had, many of them, the haute justice in their territories, and greatly resented that the king's officers should exercise any jurisdiction therein; and it is to be supposed that the nobility of Spain enjoyed the same privilege.

BUT we find, that not only the nobility, but even the citizens, were concerned in raising those tumults and civil wars; for this same author tells us, that King Ferdinand severely punished some of the chief citizens of Saragossa, who had been the cause of putting one of the king's officers

[h] Marian. lib. xxiv. p. 134.

[i] Ibid. p. 111.

to death, for doing his duty; and, moreover, that, in the year 1447, he gained the point of altering the manner of creating the city magistrates, which used to be by the citizens themselves, and had that authority vested in the crown, which was a remedy against tumults.

IN 1488, Ferdinand recovered Placentia from the family of Stunica, who had obtained it from the crown, in the reign of some of the former weak kings. “Magnus (ex eo) procerum timor, ne quæ perturbatione temporum superioribus, regibus extorferant, restituere cogentur regi, majori potentia consilioque [k].” This was in Castile. In Arragon, at the same time, “novi tumultus extabant. Proceres civitatum societatem nuper initam, disturbare cogitabant quasi gravem, nimiumque privatis ipsorum commodis obsistentem: neque prius restiterunt, quàm eâ societate in decem annos abrogata, comitiis Turiasone habitis consequentibus annis [l].” In this same year, Ferdinand obtained likewise the mastership of the order of Calatrava to be united to the crown of Castile, and soon after the mastership of the other two military orders; which union was a great increase of power to the crown; inasmuch that Marian. says, this prince was “acer, impiger, solers, cautus, in acie ferox, post victoriam mitis.”

IN 1493, “reg. Ferdinand. et Isab. nihil in hunc præclarius indicit, eâ mutatione quæ in tribus sacris militaribus castellæ ordinibus facta est. Multum ii milites juverant Mauris ex universa Hispaniâ deturbandis impio imperio evertendo: genere et factis nobilissimi, strenui, pugnaces. Confecto Granatenfi bello, cum jam parum territoris ab hoste esset, pro gratiâ odium redditum. Dolebant reges ab eorum potestate magistros ordinum esse liberos, iis opibus eâque auctoritate ut regibus formidabiles essent, tumultus et bella sæpe in provincia concitarent. Ea species facta est prætenta, vera an conficta non disputamus. Certe in comitiis non lex et æquitas sæpe valebant, sed vis et ambitus. Itaque ab Innocentio octavo diploma est ablatum, qua sublatis magistris eorum ordinum administratio procuratioque omnis regibus credebatur.” So the orders were, this year, united to the crown, for Ferdinand’s life; and, in the time of Charles V, Hadrian VI united

[k] Marian. lib. xxv. cap. 12. p. 133.

[l] Ibid.

them for ever to the crown; and granted to him and his successors, “*jus præsentandi episcopos Hispaniæ qui ante ad eorum supplicationem precario a pontificibus Romanis instituebantur* [m].”

AFTER Isabella's death, when Ferdinand retired out of Castile, the impolitic management of Philip, husband to Queen Joanna, brought him into much contempt with the proceres; so much that Marian. says, “*ex eo novus rex (Phillippus) contemptui esse cœpit, prorsus ut Garfiam lassum, cum maxime vellet, neque regio consilio præficere neque Ferdinando filio institorem adhibere potuerit, procerum intercessione eo conatu impedito* [n].” Philip dying soon after he came to Spain, and there being great disputes who should have the regency, not only the proceres had again an opportunity of making disturbances and gaining the best terms they could from Ferdinand, but even the citizens, in different parts, raised commotions and disturbances amongst themselves. But, in the year 1507, during Queen Joan's madness, and while Ferdinand was in Italy, things in Spain were in great confusion. The council had no authority; the proceres were all ready to break out into quarrels: nobody obeyed but those that would: there were disturbances, even to plunderings and slaughter, between different parties, in the cities of Toledo and Madrid; and the like in divers other cities and parts of Spain, almost universal disorder.

To put a stop to those disorders, Ferdinand begins by gaining two or three of the proceres or grandees, by large grants to them; and so made his party stronger. Then he proceeded to reconcile others, and to subdue those that were most refractory; and, at length, he recovered several considerable castles and cities to the crown. But to such a height of insolence and power were the grandees arrived, in those days, that the marquis of Priego seized and imprisoned the king's judges at Corduba. But the king severely punished both him and his associates for so doing, after he had subdued the other refractory grandees. The proceres of Arragon, in a convention of the estates, in 1515, would not grant any money to Ferdinand, “*nisi subditis populis præcisa facultate regiam opem per appellationem (ab eorum judiciis) implorandi* [o].”

[m] Marian. lib. xxv. p. 150.

[n] Ibid. p. 255.

[o] Ibid. p. 340.

ON sees from these extracts of Mariana, &c. that, in the fourteenth and fifteenth centuries, the nobles of Spain, especially the more eminent of them, were possessed of so great immunities privileges, powers, and jurisdictions, that they not only were able to bear very hard upon their vassals, and upon all the lower sort of people about them, but they could, upon any occasion, make great disturbances and oppositions against the crown itself. At the same time the citizens and burghers, though subject indeed to these oppressions from the nobility, yet had still preserved that eminent privilege, which several of them seem to have had from the recovery of Spain from the Moors, of sending deputies to the cortes, or general meeting of the states, and of giving their consent to all extraordinary taxes, which, otherwise, ought not to be raised upon them.

INDEED, by too great carelessness in the exercise of this right, they had suffered several impositions or excises, that were at first granted but for a time, to grow into custom, and pass for a part of the settled revenue of the crown. In consequence of which, the cortes were not summoned so often, or so regularly, as they would otherwise have been; but still, even in the reign of Ferdinand and Isabella, and in the beginning of that of Charles V, this privilege was not contested by the crown: it was acknowledged, that no extraordinary supplies of money could be legally levied upon the people, but by the consent of the procurators in the cortes.

MUCH about the same time, the discovery of the East-Indies, and of America, brought great wealth into Spain, which being chiefly diffused among the citizens, or third estate, rendered them more considerable, and of greater weight in the constitution. In these circumstances, if the citizens and people had adhered to the nobility, and the nobility, without oppressing themselves, had afforded them the protection they might have done, against the attempts of the crown, the liberty of the kingdom might easily have been preserved.

BUT, for want of this union and concert, the power of the nobility was first broke in upon, by Ferdinand the catholic; who, after the conquest of Granada, several times humbled the pride of the great men, by refusing the too liberal grants of Henry IV, taking many of their strong-

est castles and most important principalities and jurisdictions, from them; by taking to himself, by grant of the pope, the three great masterships of the sacred military orders: which were afterwards, in Charles the Sixth's time, united to the crown for ever, and were a very great increase of power to it.

THE power of the nobility was yet more broke by the address and courage of Cardinal Ximenes, who had the administration, or regency, of Castile, after the death of Ferdinand. This great politician saw, that this was the first and greatest point the crown had to gain; and he took several ways to do it. One was, to retrench the salaries of useless people, and to resume the crown grants. But the principal one was, to form a standing militia out of the inhabitants of the several cities, to whom officers and ammunition were to be found at the expence of the crown; who were to have several privileges for this service, particularly an exemption from quartering the king's household, &c. and were to be reviewed every Sunday [p]. This establishment was very pleasing to the people, and accordingly, in a very short time, more than 30,000 select soldiers were drawn together out of the cities; but it was equally displeasing to the nobility, "*ut populus ignobilis, auctoritate publicâ armaretur ad nobilitatem evertendam et vastandam* [q]." By these and other arguments of the nobility, many cities were led to oppose it. The Pintians were so especially, who were encouraged by the neighbouring grandees, and even by some of the council of regency: but their discontents, and the effects of them, were soon suppressed by Ximenes.

THE advantage of these public soldiers appeared on several occasions, as particularly against the insolence of a parcel of young noblemen, who hindered the execution of a sentence by a court of judicature, and affronted its officers. In fact, Ximenes kept all the grandees in awe; and, when any of them proved refractory, he employed the public militia to oblige them to submit.

WHEN Charles V was called into Germany, to take upon him his new dignity of emperor, he sent Cardinal Adrian into Valencia in his stead, about the year 1518; but the cardinal found that city in great con-

[p] Gomez, p. 1081.

[q] Ibid. p. 1082.

fusion : the citizens having before turned all the nobles, save one whom they said was an honest man, out of the city. They told the cardinal that the tyranny of the nobles was insupportable to men who were free-born : and accordingly they dispatched a substantial shoemaker and a carpenter as their commissioners to the king [r]. Charles V demanded such large sums of money of the cortes, and, at the same time, did so many things which they thought contrary to the honour and advantage of the Spanish nation, that, though at the cortes at the Groyne, the sums demanded by the court were given by a majority of the third state, who had been bribed by promises, &c. yet many of the cities were not the less discontented with those grants, and with the nobles for complying with them ; they called them Chivres's journeymen, who, so they could but have a share of its spoils, did not care how much their country was plundered by foreigners [s]. The people, in many places, rose upon and killed the procurators, who had consented to the new donative.

THE clergy, irritated by the king's making a young foreigner archbishop of Toledo, were generally on the side of the discontented commons ; though only the bishop of Zamora, and a few of the inferior clergy, declared themselves openly on that side. And though few of the nobles did ever join with the commons, yet none of them acted vigorously against them, till they were forced out of that neutrality, by the cardinal's threatening them with a resumption of all the crown lands [t].

THE associated cities, which were many, formed a junta, to which they sent procurators, as to a cortes : which junta required Cardinal Adrian, the king's viceroy, to desist from acting in that quality ; and published a manifesto, in their own justification, for having taken up arms [u]. Hereupon the admiral of Castile raises an army against the commons ; and the Biscaineers sent Cardinal Adrian some troops for his guards, with an offer of more, to reduce the Castilians to their obedience. Soon after this the commons grew suspicious of their leader Giron, because of his being related to many of the grandees, whom they looked upon as their most dangerous enemies ; and the admiral of Castile took Tordefillas by assault, and in it most of the procurators. Whereupon the commons formed a

[r] Geddes, vol. i. p. 248. [s] Ibid. vol. i. p. 253. [t] Ibid. vol. i. p. 259. [u] Ibid. p. 262.

select council, who pretended to have an extraordinary respect and zeal for the king's person, and said they would make him greater than any of his predecessors, by resuming the crown lands from the nobles.

THEY seemed to have dropt their quarrel against the northern minister, to fall the heavier upon the nobles. They declared they would no longer bear the whole charge of the government, which had been thrown by the nobles upon the commons, by the former having robbed the crown of most or all its antient demesne lands[w]. In their letter to the nobles (Geddes, *ibid.* p. 325.) they say, that the nobles have robbed the crown of all its antient demesne lands and revenues, and that the great riches of the nobility, and the poverty of the crown, are visibly the great and standing grievance of the kingdom; therefore, before the commons will lay down their arms, they are resolved to have all the alienated lands and revenues restored to the crown.

THUS ended the last treaty between the nobles and the commons; the differences afterwards being left to the sword to decide. The army of the commons, being raw undisciplined soldiers, and their generals unexperienced, made little or no defence against the crown armies, but were every where strangely intimidated. They shewed at first great heat and violence, but in the process no conduct, and in the conclusion a very faint and servile spirit. On the 10th February 1522, Toledo submitted, and thus ended the commons wars; which began in April 1520: neither did the wars of the commons of Valencia last much longer, which, having been all along carried on with much greater fury and devastations than that of Castile, ended in a great slaughter of the commons, in a field of battle.

IN the cortes at Valedolid, in 1522 or 1523, the procurators applied strongly to Charles V, to have the giving of money postponed to the consideration of the national grievances, which, they said, was the antient and most reasonable custom: but, being told by the king, that it was in vain to struggle with him for a thing which he was resolved never to grant, they gave it over, and presently voted the sum desired by the court [x].

[w] Geddes, vol. i. p. 315.

[x] *Ibid.* p. 353.

AFTER the crown and its ministers had made use of the arms of the commons to humble the pride of the nobles, they gave the nobles an opportunity of revenging themselves upon the commons; for, at Charles V's coming into Spain, there were such unusual demands, and extorsive illegal practices by his ministers, as greatly dissatisfied most of the nation, especially the generality of the commons. They took arms; and most of the chief cities of Castile, which send representatives to a cortes, associated themselves, took arms, and declared for the commons: and some even of the nobility and gentry joined with them at first; and others, who did not declare openly against them, were thought to favour them, and would have acted more openly in length of time, if the commons had used them well. But there was too inveterate an animosity between the nobles and commons for them to act long in concert; the commons soon began to threaten the nobles with a resumption of all the crown lands they possessed, which must have tended to their great impoverishment. And while they made but faint opposition to the authority of the crown, and even seemed to have a secret awe of it, they actually made proposals to it, to enrich it to a great degree, by a resumption of all the crown lands: for want of which it was forced to burden the commons with taxes. One sees here how poor politicians the commons were, to propose such a resumption as would probably have made the crown absolute, out of resentment against the nobility: they declared, they would not lay down their arms till the resumption of the crown lands should be actually made, from the nobility.

UPON this, the nobility joined together, and acted openly against them; they joined the crown army brought out of Navarre, and gave battle to the commons: or, to say the truth, the latter were routed and broke to pieces, without so much as striking a stroke.

THINGS had the same issue in the kingdom of Valencia, where many of the nobility at first joined in the commotions; but they were there too made to desert the party, by the animosity, or rather rage, of the commons against them; who threatened to extirpate them all. They therefore joined with the king's forces to quell the commons; and when these commotions were suppressed, and the royal power thus strengthened by the accession of the nobles, it has ever since been increasing.

For

For, the nobles having been sinking in their estates and power, the crown has been ever since taking their privileges from them; and, by degrees, the crown revenue is so established, that they have no need of any cortes: it has got the power of heightening its revenues as it pleases: the management of the Indian treasure is wholly at its disposal, and the church revenues are in a great measure so: and the churchmen with the inquisition are continually inspiring all ranks of men with a fervile disposition, and an awful reverence to all the king's commands. And, to crown all, the king has a standing army of as many troops as he pleases. So that the crown of Spain is now as absolute, and its authority as much settled in the hearts of the people, as that of any power in Europe.

S E C T. III.

Denmark and Sweden.

AMONGST the circumstances in which the two northern kingdoms of Denmark and Sweden differed from those of France and Spain, one was, that, the two former countries not having been conquered by any invaders, the bourgeois and peasants, in them, were always upon a much better foot than they were in the latter. They had very early, and probably from the beginning of those kingdoms, a share in the legislature. For as to Sweden, Joannes Magnus [y] says, that “præter equestrem ordinem, ecclesiasticorum, civium, et agricolarum ordinis ad comitia vocandorum expressa mentio.” And from Eric Upsal, lib. vi. Hist. Suecan. p. 327. “tempore præfato accedunt ad comitia Stockholmienfia, episcopi, prælati, milites, liberti: i. e. equestris et nobilium ordo, et rusticorum et civitatum nuncii speciales.” And in Snorro Sturlonides, we have several instances of the northern kings being elected in public assemblies, where the people were present, and gave their consent.

AND, as to Denmark, Pontanus tells us, that “Ericus Rex Daniæ (A. D. 1096) nunquam ex procerum aut popularium cœtu solitus erat

[y] Lib. i. cap. 4. art. 16. LL. Provinc. Suec. de Rege.

“discedere nisi salutatis singulis [z].” Regnante Nicola, A. D. 1134, in-
 “dictis Ringstadii comitiis, magnus parricidii et cædis reus peregitur.
 “Nicolaus pater (who was then king) populi et procerum studia metu-
 “ens, &c. rex (Nicolaus) ita concione petitâ haud aliter pacare patrum
 “et populi animos potuit, quam ut magni abdicatâ præsentia eum do-
 “mo ac patriâ excessurum, nec unquam, nisi regno et proceribus volen-
 “tibus, rediturum jurejurando firmaret. Regem autem juramenti poeni-
 “tere coepit.” It was represented to him “tetrime fibi confuluisse
 “quod unicum filium, eumque in spem regni educatum, levibus agresti-
 “um judiciis permisisset : ipsumque hoc fibi potius refervare oportuiffe
 “et patrum judicio, non populi aut procerum fuffragiis revertendi jus
 “atque arbitrium deferri debuiffe [a].” In consequence of their having
 this fhare of the legislature, they were poffeffed of greater privileges, more
 freedom and fpirit ; and preferved them longer than the French
 and Spaniards did. And they might have enjoyed them to this day, if
 they could have preferved a balance, and good understanding, between
 the two orders of the nobility and people.

BUT this balance was firft broke in Denmark, by the exorbitant
 growth and aggrandifement of the nobility, in the beginning and procefs
 of the fixteenth century. The nobles, who had always confiderable pre-
 rogatives in that kingdom, much increafed their wealth and power, by
 the fpoils they got in Sweden, while this latter crown was united, or
 rather fubject, in fome meafure to that of Denmark. The nobles had
 fome time before been acquiring new degrees of authority over the pea-
 fants ; and had ufed them very oppreffively. In the year 1418, under
 Eric X, “les paifans du Jutland fe revolterent contre la nobleffe, qu'ils
 “accufoient de tyrannie, et de les accabler d'impôts infupportables. La
 “defection fut fi generale dans cette partie de Dannemarc, que ni la
 “douceur, ni la violence ne furent pas capables de la reprimer. Enfin
 “les chofes furent poulfées fi loin, que la plus grande partie de la no-
 “bleffe fut contrainte de fe mettre fous la protection de la maifon de Hol-
 “ftein, à fin de fe fouftainer à la feureur des paifans [b].”

[z] Pontan. lib. v. p. 201.

[a] Ibid.

[b] Hift. Dannemarc, tom. iv. p. 156.

THEY soon after gained a more considerable degree of power against the crown, by deposing Eric the Pomeranian, for no great cause, and electing Christopher of Bavaria; under whose conduct they beat and dispersed an army of peasants in Jutland, who had assembled together out of hatred to their lords, and some affection to their deposed King Eric [c]. The nobles afterwards obliged Christopher to send out of the kingdom all the German strangers he had invited thither, and to whom he had given fiefs, castles, &c. But, as I have already observed, one of the chief causes of the aggrandisement of the noblesse, was the wealth they acquired while Sweden was united to Denmark: another was, the influence they had in the deposing of Christian II, with whom they made a contract for the preservation of their privileges, and electing Frederic I king in his room; which was done in 1523. Under the reign of which latter king (says the author of the *Memoirs of Denmark*, p. 8, 9.) it was, that the nobility of that country made the greatest step to the grandeur they attained to afterwards: for they, while Christian II and Frederick were contending for the crown, took the opportunity to prescribe such rules to the last, as to advance their power, not only above that of the other estates, but even above the royal prerogatives.

KING Frederick I was looked upon, by all understanding people, as a prince who had a greater share of piety than of policy; when he suffered the reformation of Luther to be introduced into that kingdom at a time when the nobility were already overgrown in riches and power: he did it in concert with the nobility [d]. It being evident, that the power of the bishops and prelates, who hitherto had kept up, in some measure, the balance, being fallen with their revenues, this must needs be the greatest step, that could be made by the nobility towards advancing themselves, not only far above the clergy, but also above the other estates. It is easily to be imagined that the royal prerogatives, being brought into so narrow bounds as they were, and the clergy's authority in a manner quite abolished, the corporations alone were not able to resist long against those, who, sitting at the helm, had the chief

[c] Hist. Dannemarc, tom. iv. p. 167. 187.

[d] Ibid. tom. v. p. 30.

management of all affairs of moment. And the peasantry having, for the most part, an entire dependance upon the nobility, as being partly their tenants, and partly their vassals, were not in a condition of making so much as the least shew of resistance against those who were their lords and masters. Thus indeed the name of the four antient estates of Denmark, to wit, the nobility, clergy, citizens, and peasants, remained; whilst all the authority and power was effectually lodged in the first: which, in the succeeding reigns, did increase to such a degree as proved intolerable to the other estates, and brought the whole kingdom to the brink of destruction.

THOUGH Frederick I encouraged the reformation, and gave the teachers of it liberty to preach publicly, &c. yet it was not before Christian the Third's time, in 1537, that the popish establishment, and the wealth and power of the prelates, was quite ruined, at the estates at Odenfée. The bishops were then imprisoned, and outed from their fees and revenues [e]. Most authors, who have wrote of those transactions, agree, that the aggrandisement, which the nobility had from the subversion of the popish hierarchy, was a great cause of endangering the crown and the kingdom. The author of the Hist. Dannemarc particularly expresses himself in nearly the foregoing words, and then goes on as follows: "non seulement toutes les places des sénateurs, et les principales charges de la cour, étoient entre les mains des gentils hommes; ils prétendirent encore être maîtres de toutes les autres: de sorte que le roi ne pouvoit disposer d'aucun employ de quelque importance, même en faveur de la noblesse, sans la consulter. Ils ne s'entinrent pas là. Ils l'attribuerent le privilege de nommer les magistrats de presque toutes les villes du royaume: et priverent les autres ordres, tant ecclésiastiques que séculiers, du droit d'acheter des terres dans le royaume. Ils portèrent même les choses si loin, que si une terre venoit à tomber, par hypothèque ou par quelque autre titre, entre les mains d'un particulier, il étoit obligé par une proclamation annuelle d'en offrir la vente à la noblesse sur le même pied qu'il en avoit obtenu la possession. Ainsi les bourgeois des villes et les paysans se virent réduit à une dependance

[e] Hist. Dannemarc, tom. v. p. 129.

“absoluë de la noblesse; et les ecclesiastiques à soumettre à sa volonté par le droit que la possession des terres leur donnoit de nommer au benefices.”

By these means the nobility had brought the commonalty quite under subjection: they loaded them with taxes, and exempted themselves as far as possible. They even used the protestant clergy very ill, who (says Polit. Essay, p. 101.) had groaned under the lash of many arbitrary impositions from the nobility. By possessing themselves of the principal charges in the state, as those of counsellors, governors of provinces and forts, and the like, and behaving very ill in them, and consequently with ill success, they increased the animosity of the people against them.

FREDERICK II, son and successor to Christian III, being a mild prince and entangled with a war with Sweden, was not in a condition to oppose the encroachments of the nobility. His son Christian IV, who succeeded him, in 1588, intended it; but, having been unsuccessful in Germany, that disgrace broke all his measures at home. The nobility, who dreaded his designs, thwarted him on all occasions: especially by exempting themselves, as much as possible, from taxes and other burdens; which consequently falling upon the commons, who were not alone in a condition to provide for the security of the kingdom, this encouraged the Swedes to fall upon it, and bring it into great danger; so that Christian IV, who died in 1648, left them in great confusion. Besides, that prince had married several of his daughters, by a second ventre, to some of the chief of the Danish nobility. This increased their spirits, and made them think of excluding Frederick III, who was the eldest surviving son of Christian IV, and raising his younger brother Woolman to the crown; however, they could not gain this point. But, before they would admit Frederick III to the throne, they reduced the royal prerogatives, as well as the privileges of the commons, to such narrow bounds, that of the first there was nothing but the royal title left: and the last were excluded from all employments, not excepting military ones.

BUT, at the siege of Copenhagen, in the year 1659, the nobles, finding themselves and the whole kingdom in great distress and danger, began to change their tune, and court those whom they had despised and oppressed

oppressed before. They promised the citizens of Copenhagen a vote in all public consultations; a privilege to purchase lands and lordships, and to enjoy them with the same rights as the nobles did; and to be burthened with no taxes except such as the nobility did pay, and that not without public consent: besides which, they were to be free from all quarterings of soldiers in time of peace, and their children to be capable of bearing all places of honour and profit, equally with noblemen's sons [f]. But as soon as their distress and danger was over, and peace was made with Sweden, the nobility, in the assembly of estates, held 1660, to consult about remedying the disorders, caused by such unsuccessful wars, returned to their old oppressive dispositions, and way of acting. The army was to be paid and discharged: there was little money in the kingdom: the lower and middling sort of people had been exceedingly harrassed and impoverished by the wars, the ill success of which had been chiefly owing to the ill conduct and cowardice of many of the nobility, who had posts in the state and in the army. Yet, notwithstanding all this, the nobles appeared very little sensible of the public calamity: they would not abate an ace of their pretended prerogative: they were resolute to lay the whole burden of discharging the soldiers, and repairing the losses sustained in the late war, upon the shoulders of the two other estates, the clergy and the commonalty.

THIS caused great animosities and warm debates in the estates; the speaker of the commons reproached the nobility with their having been the occasion of the kingdom's calamity, and said the least they could do was to bear their proportion in the taxes that were to be raised. But, the nobility having answered in terms of great vehemence and contumely, treating the commons but as their vassals or slaves; the commons, fired at this usage, resolved to separate themselves from the nobility, and to consult about ways of putting themselves upon a better foot, or at least of humbling the nobility: and they thought the best way to do it, was to offer an hereditary and absolute right of government to the king: this course was approved by a general court both of the commonalty and the clergy. They pursued this plan; and had it in

[f] Mem. of Denmark, p. 15.

their power to make it effectual, without the consent of the nobility, by having engaged in their party, the court, the clergy, and the army [g].

AND the nobility not complying at first, the clergy and the commons, headed by the bishop of Copenhagen and the speaker, went forthwith to court, and being conducted to the king's presence, the bishop, in the name of the clergy and commons, offered the king the hereditary crown, and an absolute sovereignty, without limitation. The king thanked them; but said it was necessary the nobility should concur with them, as he believed they would. Some of the nobles would have got away; but the gates of the city were shut up by the king's order: and the whole body of the nobility, being then afraid to be called to an account for their late ill conduct by the estates, who were now backed by the court and the army, at length resolved to comply, and join with the commons in a surrender of absolute monarchy to the king, who accepted of it; and it was accordingly with great and public solemnity vested in him: not one of the nobles venturing to make a protestation for the saving of their rights. So that now the royal authority in Denmark is as absolute as it is in France or Spain.

SWEDEN was the country in which the Old Gothic constitution remained the longest; at least in some degree. For though Gustavus Ericson did, in the estates of Sweden, in 1544, procure the crown, which he had acquired himself, to be made hereditary in his family, and did also, during his life, govern in most things according to his pleasure; because, by having taken from the clergy, and reunited to the crown, above 13,000 farms, he, with the revenue of them, and with the church plate, was enabled to maintain a standing army, the officers of which were for the most part Germans and Lutherans, without having any recourse to the estates; yet still the free constitution in some degree remained [h]. For his son Eric was deposed by the estates, in 1568; and, after him, his brother John, in order to get the consent of the senate of Sweden to his son Sigismund's accepting the crown of Poland, agreed to conditions prescribed by the senate, which were disadvantageous to the royal authority. And this Sigismund, after he

[g] Mem. of Denmark, p. 21.

[h] See Pol. Essay, p. 77.

came to the throne of Sweden, in 1597, was also deposed in an assembly of the estates of that kingdom, at Stockholm, in 1599. Charles IX, who was the last of the sons of Gustavus Ericson, was, after he came to the crown, in 1604, very much engaged in wars, and not very fortunate; and his son Gustavus Adolphus, though victorious abroad, and able to subsist his army of 70,000 men, without having recourse to the estates, was yet very benevolent, and willing to encourage the nobility, and maintain the constitution of his country. The reign of Queen Christiana, his daughter, which began in 1633, though very successful in the German wars, yet was managed chiefly under the conduct and administration of the principal of the nobility: and Charles Gustavus, her cousin and successor, being greatly obliged to the states for acknowledging him, bound himself, by the most solemn oaths, to maintain their liberties and privileges: therefore, at the accession of Charles XI, in 1660, the kingdom of Sweden might be said to have retained, in a considerable measure, a free constitution; with a title to meetings of its estates, and privileges enjoyed by all the four orders, of nobility, clergy, bourgeois, and peasants.

It was this last prince that gave the finishing stroke to the remaining liberties of that kingdom. And he did it principally by taking advantage of the like dissension and animosity between the nobility and the other orders of the kingdom, which we have found to have occasioned the loss of the liberties of the people in France and Spain, and Denmark. This animosity had been breeding and increasing between the two orders, for some time before: the nobles, in the reign of Queen Christiana, were in great power and a very flourishing condition, by the wealth they had acquired in Germany, by the many and important charges they possessed in the state, and by the many crown lands they enjoyed. Many of these crown lands they got in the course, and towards the end, of the German war, by the peace of Munster; when the crown of Sweden, being straitened for money, after the battle of Norlingen, was obliged to sell to the nobles great quantities of crown lands, at very cheap rates [i].

[i] Hist. Sweden, lib. i. p. 193.

As these crown lands made a great accession of opulence and grandeur to the noblesse, so they raised against them the envy and discontent of the three other orders, the clergy, the burghers, and the peasants. “Les
 “ecclesiastiques, les bourgeois, et les païsans, portoient trop d’envie à la
 “noblesse pour ne pas embrasser avec joye toutes les occasions de la ruiner.
 “Outre que ces trois ordres assemblez surpassoient toujours le quatrieme
 “en nombre des suffrages, ils avoient une raison commune d’abaissier la
 “noblesse, dont l’opulence ne tournoit jamais qu’à leur oppression. C’é-
 “toit d’être moins chargez d’impôts à proportion du contingent auquel
 “on obligerait les gentil hommes [k].” Accordingly the states, upon Queen Christiana’s requesting of them a supply, proposed to her to resume the crown lands from the nobles, of whose luxury and pride the three other orders complained, while they were overburdened with the charges of the public: however, they could not, at that time, gain their point against the noblesse. But their animosity against them still continued; and, in the reign of Charles Gustavus, successor to Christiana, they again made instances to the king, for a resumption of the crown lands from the nobles, which they would have had to extend as far back as 1604. And they so far gained their point, that a resumption was actually made of many, though not all the grants of the crown lands, that had been given since the death of Gustavus Adolphus [l].

BUT, in the reign of Charles XI, this point was quite finished: the senators and nobles having mismanaged the public affairs, during the minority of that prince, and the kingdom being exhausted by the unsuccessful wars they had undertaken; in 1680, he called an assembly of the estates at Stockholm; and therein, chiefly by making use of the animosity subsisting between the three other orders, and the senate and nobles, he gained the point of an entire resumption of the crown lands.

IN the time of the assembly, the king indeed had his regiment of guards, consisting of 2000 foot, in the city of Stockholm, whose colonel and principal officers were Livonians. Moreover his majesty forbid several of the most considerable nobility to be present at the estates; and also gave the title and rank of barons to several generals and colonels

[k] Hist. Sweden, lib. i. p. 203.

[l] Ibid. p. 213.

of the army, in order to have the more votes in the chamber of the nobles. But the principal means of effecting his purposes, was his having the three lower orders of the estates entirely with him against the nobility, who were to be chiefly affected by the resumption of the crown lands. The peasants presented memorials to the king to solicit the resumption: “les clergé, les bourgeois, et les paisans, se laisserent aisement persuader que les maux qu’ils avoient souffertes ne venoient que de la trop grande autorité des noblesse. Ils estoient bien aises d’ailleurs d’avoir occasion d’abaisser la noblesse, toujours fiere et imperieuse dans la prosperité, s’imaginant que le fardeau qui tomberoit sur elle estoit autant de soulagement de leur propre misere [m].”

THERE were deputies chosen out of the estates to examine what ground there was for the authority the senate had exercised; who declared that the king was not obliged to lay any affairs before the senate but what he pleased [n]. The estates also declared that the king, who held his crown from none but God, was accountable to God only for his conduct. There were commissioners established out of the several orders, to examine the conduct and administration of the senators and noblesse, who were chosen out of all the orders of the estates. These commissioners, besides making strict resumptions of the crown lands, which in some families amounted to very great revenues (particularly Count Conigsmark alone was to lose near 26,000 crowns per annum), also adjudged those who had possessed them to pay great sums of money, by way of satisfaction, for the profits they had received from them.

THE estates also, at the same time, consented to taxes for the equipping and maintaining the fleet; and also for recruiting the army: the noblesse also agreed to contribute in proportion. There was a resumption of all counties, lordships, or lands, alienated or granted from the crown, since the year 1604, above the value of 600 rixdollars a year, and all the ecclesiastical revenues in Livonia that had been formerly annexed or given to the crown. The clergy also granted the fifth penny of their revenue.

ANOTHER assembly of estates was held in 1682; wherein were passed several resolutions, in confirmation of what had been done in the former

[m] Hist. Sweden, liv. ii. p. 146.

[n] Ibid. p. 149, 150.

assembly.

assembly. The nobles opposed themselves strongly to these resolutions; but in vain. The estates confirmed the absolute and independent authority that had been acknowledged in the king, by the last estates; that he might not only govern according to the laws then subsisting, but he might change them, or add to them, as he thought fit, for the good of the kingdom [o]. “On ne sauroit croire quel immense revenu le roi s’acquitt par le moyen des reunions: et combien il appauvroit en meme temps la plupart des familles de Suede dont les ancestres et aux memes avoient consumé leur biens et leur vies au service de l’état [p].” Hereupon the king established and settled a constant military force; and, to attach the officers the more to his interest, he not only increased their usual pay, but gave them rank and precedence after the privy counsellors; which was a great mortification to the nobles. But it was too late to complain; the old Gothic constitution, with their liberties, were lost; and they were now to expect the same tyranny and oppression which they had heretofore practised upon the commons; which, in the following reign, had very near proved the destruction of Sweden; and was the means of establishing the form of government they enjoy at present.

SECTION IV.

The Commonalty of England had, from the beginning, a great Spirit of Freedom, and many Circumstances of Advantage, as in other Respects, so even as to Trade.

AFTER having thus considered the changes that have happened in the constitutions of other countries, mankind will probably wonder how this kingdom, which, like all the rest, had a distinction between nobility and commonalty, should have avoided those animosities between them, which have proved the destruction of all the Gothic constitutions. This ought to be, in the first place, ascribed to the good providence of God, who doth whatsoever he pleases in all the kingdoms of the earth. But, as this providence acts by second causes, it may be

[o] Hist. Sweden, liv. ii. p. 162.

[p] Ibid. p. 373.

worth our while to enquire what they were that had any efficiency in this affair; and I shall, with great freedom, proceed to lay open my thoughts on this point.

AND herein I must, in the first place, observe, that the commons of England have, from the most early times, had more freedom and wealth, and consequently more interest in the government, than the commonalty, or third estate, in any other of the countries we have mentioned. For, from the first institution of the Saxon government, the Saxon ceorles, *i. e.* those of the lower rank of people, who were employed in husbandry, were by law secured, in their own persons and in those of their wives, from injuries and affronts. There were penalties, in case any one debauched the wife of a ceorle, or used her otherwise uncivilly [q]. They could not be imprisoned for any cause but for felony and breach of the peace; and then only for want of bail. There were even penalties appointed for binding or beating, or, in other lesser instances, insulting, such a one [r].

EVEN the pocillatrix, or maid servant, of the ceorle was not to be debauched without punishment on him that did it [s]. The penalty for debauching her was half as much as for debauching an earl's pocillatrix. Nor was there to be any breach of the peace in the house of a ceorle. The penalty for making it was, by the fifteenth law of Ethelbert, half as much as for the like offence against an earl. By the laws of Ina, Wilk. 16, the penalty for fighting in a ceorle's house was half as much as in an earl's; though the compensation to a ceorle indeed was but a tenth part as much as in the case of an earl. The quantity of rent which, they were to pay for their lands, which they farmed, was also ascertained, by the seventieth law of Ina. And if they paid their rents duly, they could not be turned out of their farms [t].

THE lower freeholders or freemen were bound, indeed, to be security for each other, in their several tythings; and some of them were commendatitii, or under the protection of earls or other great men: but these engagements were owing merely to the unsettled condition of those times, when there was hardly any security to be had unless by

[q] LL. Alfred, 11. edit. Wilkins, p. 37.

[r] Ibid. p. 42.

[s] Leg. Athelf. 16. Wilk. p. 32.

[t] Leg. 33. Will. Cong. edit. Wilkins.

force. They did not abate of their freedom in point of law. A ceorle, or freeholder, might be as free as the greatest thane: nay he might come to be a thane himself, if he could but get wealth enough. By a law made in the reign of Athelstan, it was provided, that “*si villanus excrevisset*” “*ut haberet plenarie quinque hydas terræ suæ propriæ, ecclesiam et co-*” “*quinam, tympanarium, et januam, et sedem et funder notam in aula*” “*regis, deinceps thani lege dignus fit [u].*” The same law says, that if a thane increased proportionably, he might come to be an earl. “*Iuste*” “*etiam nos sapientes diximus, quod Dei providentiâ fervus fit thanus,*” “*et colonus fit comes.*”

THE freeholders, in their county courts, generally chose their sheriffs and coroners [w]. And the inhabitants of burghs and cities were upon still a more advantageous foot than the ceorles. For, in those turbulent times, all public sales were, by law, to be made in those walled or privileged places, in order to prevent frauds, and the sale of stolen goods. “*Grantebrudge et Norwich et Thetforthe et Gippiswicke tantæ libertatis et dignitatis essent, ut si quis ibi terram compararet, vadibus non*” “*indigeret [x]. Nullum mercatum nec forum fit nisi in civitatibus regi-*” “*ni et burgis clausis.*” LL. Will. Conq. Wilk. 217. which was agreeable to the twelfth and thirteenth laws of Athelstan, Wilkins, p. 58, 59. Hence all or most of the trade that was then moving, was carried on by the inhabitants of those places.

AND the trade of England, in those times, was not quite so inconsiderable as some writers have represented it [y]. On the contrary it appears, by several good proofs, that there was trade sufficient to enrich, and make distinguished, the cities that had it. So long ago as the times of the Romans, Tacitus takes notice that Londinium was not indeed “*cognomen-*” “*to coloniae insignis; sed copia negotiatorum et commeatuum maxime ce-*” “*lebre.*” A like account is given, by William of Malmesbury, of the city of Exeter, in somewhat later times. Offa had some intercourse with Charlemagne in favour of the Saxon merchants: “*non enim*” “*mediocriter offensus idem Carolus mercatorum et peregrinorum, quos*

[u] Wilkins, p. 70, 71. [w] See Lord Coke's Comment on the 1st of Westminster, 2d Inst. p. 175. and law of Edw. Confess. Wilkins, 205 [x] Hist. Eliens. 470. [y] Temp. Misc. part ii. p. 103.

“ ad Offam noverat pertinere, commeantium pacem et transitum per-
 “ turbabat [z].” Carolus, in answer to Offa’s letter, says “ Negotiato-
 “ res quoque volumus ut ex mandato nostro patrocinium habeant in reg-
 “ no nostro legitime.”

ALFRED is said to have much encouraged foreign trade, by building ships, and lending them to merchants for that purpose: and that some, in his time, traded to very remote parts of the globe, and brought things from thence unknown to England[a]. And one great proof of the degree of trade in this nation, at that time, is, the wealth it had then in comparison of its neighbours, and the opulence of some of its particular trading towns. The author of *Gest. Gul. Conq.* apud Ducheſne, p. 210, speaking of the Conqueror’s returning the first time to Normandy, says “ attulit quantum ex ditione trium Galliarum vix collige-
 “ retur argentum atque aurum: chari metalli abundantia multipliciter
 “ Gallias terra illa (*i. e.* Anglia) vincit.”

THE city of London was so considerable, in the Danish times, as to pay 11,000*l.* as their proportion of 70,000*l.* imposed as a tax on the whole nation. Its citizens, and those of other principal cities, were antiently called Barons. In a charter of Henry I (in Brady of Burghs in Append.) the citizens of London, are called Barons. And Matt. Paris, speaking of the citizens of London, says, “ civis, quos propter civitatis
 “ dignitatem et civium antiquam libertatem, Barones solemus appel-
 “ lare [b].” And from Fitz-Stephens, who wrote in Henry the Second’s time, it appears, that it was then able to furnish 20,000 horse and 60,000 foot. From Spelman’s Gloss. in voc. HUSTINGS, it appears that, in the Saxon times, London and several other cities held pleas: Hustings signifies the house of pleas. And from the charter of Wallingford (in Append. to Brady of Burghs) it appears that they antiently chose some of their own officers. By LL. Edw. Confess. cap. 35. “ aldermanus
 “ in civitatibus, &c. eandem dignitatem et potestatem et modum qualem
 “ habent præpositi hundredorum et wapentachiorum.” They had burgesmotes at certain times, in which their affairs were transacted by their own consent and appointment.

[z] Vit. Offæ ad fin. M. Paris, p. 20.
 Paris, A. D. 1253.

[a] Spelm. Life of Alfred, lib. ii. p. 28.

[b] Matt.

SOME of them, as Exeter and others, had good quantities of land in their public capacities. “*Burgenſes Exoniæ urbes habent extra civitatem terram xii carucat. Quæ nullam conſuetudinem reddunt niſi ad ipſam civitatem* [c].” The burgeſſes of Canterbury had forty-five houſes, without the city, of which they had the rent and cuſtom: they had alſo of the king thirty-three acres of meadow land towards the maintenance of their guild [d]. There was ſo much regard had to theſe trading cities, that if a ſlave, in the Saxon times, had continued a year and a day in one of them, and was received into their guild, he was thereby free [e]. But Brady, of burghs, writes as if this privilege was not before Henry the Second’s time; but I am apt to be of Spelman’s opinion, that it was in the Saxon times. And, by the law of thoſe times, if a merchant ſo thrived as that he had twice paſſed over the great ſea upon his own account, he was upon the ſame foot with a thane: which ſeems to have given riſe to a cuſtom in the city of London, that thoſe merchants who have been in foreign countries ſhould wear ſwords, and others not.

ALL theſe circumſtances of advantage were accompanied with a very high and free ſpirit, in our lower and middling kind of people, beyond thoſe of other countries: as will appear by ſeveral inſtances. The Chron. of Joan. Wallingford, edit. Oxon. 1691, obſerves, p. 549, that the people of England, before the time of Canute, “*tempore ſuorum regum in omni honore et libertate extiterat.*” Accordingly, when they were much oppreſſed, they would not bear it. When Hardecanut ſent two of his ſervants to gather an illegal tax at Worceſter (ſays Will. Malmſbury), they not only reſuſed to pay it, but killed the collectors. And Earl Toſti, in Edward the Confefſor’s time, having born hard upon the Northumbrians, they expelled him their country: and when his brother, Earl Harold, went with a body of troops to ſuppreſs the infurrection, they met him in arms, and ſent him a meſſage, that they were willing to obey any earl who ſhould govern them gently: but that otherwiſe, “*ſe homines libere natos, libere educatos, nullius ducis ferociam pati poſſe: a majoribus didiciſſe aut libertatem aut mortem* [f].”

[c] Brady, of burghs, p. 5. [d] Ibid. p. 10. [e] Spelman’s Gloſſ. in voc. THEAM.

[f] Will. Malmſbury de Geſt. Angl. lib. ii. p. 83.

THE Kentish men, in the time of William the Conqueror, say that they were born freemen: that the name of bondage was never heard of among them. Their leaders therefore exhorted them manfully to fight for the laws and liberties of their country; chusing rather to lose an unhappy life by fighting valiantly for them in the field [g].

It is not certainly known what share the commons had in the legislature, nor by whom it was managed: but there are sufficient grounds to believe they had some share. *1st*, Because the Northern nations, from among whom the Saxons came into England, were used to have a share in the legislature at home; which it is not probable their colonies should lose, by their voluntary expeditions abroad. Indeed, we are told they actually retained it in most cases: as that of the Lombards with whom the Saxons were mixed. *2^{dly}*, Because of the great freedom which our ancestors the Saxons enjoyed here; even the lower sort of the people. *3^{dly}*, Because this may be deduced from several of the antient writings of those times: particularly from the address to Athelstan, the *Judicia Londini*, and some antient charters. Some of these last are probably genuine; yet, even supposing them to be false, they must have been forged *ad veritatem imitandam*: and so soon after the Conquest, it must have been known who were concerned in the legislature.

Now, from all these evidences together, I think it clear that the commons, as distinguished from the greater barons, had a share of the legislature: and it is most probable that it was vested in the thanes of so much land; in the sheriffs and heretooks, chosen by the freeholders in the counties; and in the town gereeves, or other officers there, chosen by the burghers. These being parties to the legislature, and chosen thereto by the people, were therefore always attentive to defend their liberties, and prevent any encroachment upon them; a circumstance which accounts for the high spirit in the people of those times. At the Norman Conquest, indeed, this state of things was very much changed; the Conqueror introduced the burden of tenures upon the nobility, and bore yet much harder upon the commons, freholders, citizens and burghesses. He took from them the

[g] Prynne's Plea for the Lords, p. 105.

choice of the sheriffs, heretooks, coroners, and other officers, into his own hands; he much increased the fee-farms of their towns, &c.

THESE hardships, for a time, stunned the spirit of liberty in the bulk the of nation; but it was not long before it recovered and began to exert itself. As soon as Henry the First's disputed title gave them an opportunity, they immediately stood by him, and by that got a charter; and constantly after were ready to side with all those who appeared against the oppression of the crown. In Stephen's time, the Londoners were, at first, willing to receive the empress Maud, because they hoped she would restore Edward the Confessor's laws; but, when they found she would not, they turned quick upon her. When Richard the First's chancellor acted oppressively, they were ready to join with Earl John in deposing him; and when that prince himself, after he came to the throne, acted oppressively, they were as ready to join with the first motions of the barons against him: they received him into London; and such was the general spirit of the nation, that the king had not above seven or eight horsemen left him, while the barons had a most numerous army. Whatever resolution King John expressed not to grant these liberties they demanded, they were still more resolute to insist upon them; and to carry their point through. Accordingly they gained such a charter, as was never granted at once to any nation in Europe, in those or in modern times: such a one as secured them against all the grievances they complained of. And, in so doing it, we see the nobility and the commonalty acted so much in concert, that there was no less provision made for the privileges of citizens and burghesses, than for the nobility and gentry [h].

[h] See Magna Charta.

S E C T. V.

They were also upon better Terms of Agreement with the Nobility, than most other Nations were; and the Power which the Nobility lost fell in a great Measure to them.

AND this concert, between the nobility and the burgeses and freeholders, continued down all along through the succeeding reigns: indeed there was a clause in the great charter which helped greatly to preserve and even increase it. This was the provision that the greater barons should have their several distinct writs to parliament; whereas the lesser barons were only to be summoned by a general summons. The consequence of this was, that the lesser barons, by degrees, discontinued their attendance in parliament; and, from being of the body of the nobility, they naturally fell into the body of the commonalty; by which they both augmented the weight and dignity of that body, and engaged the nobility to have much greater regard to them, and the conservation of their liberties, than probably they might otherwise have had: for we see all along that there was a proportionable regard had to the privileges and happiness of the commons, as well as to the noblesse. Some persons have thought, that, before Henry the Seventh's time, the commons in parliament were quite governed by the house of lords; but the contrary is very evident from many instances.

So that, whereas in France and Spain, &c. the commons were of very little weight and esteem, because they consisted only of peasants, roturiers, and bourgeois, ours in England, being not only of high spirit originally, but increased, by having great numbers of the antient gentry fall into them, and make one body, came to have great weight in parliament, and in the balance of the constitution. The nobility neither could, nor were so much disposed to oppress them, as they would otherwise have been. They were, on the contrary, willing to have their assistance at all times against the crown; and the commons, on their side, were at all times willing to give it, and to act heartily in concert with the nobility in favour of liberty.

THIS was done by the Londoners, in Henry the Third's time; who assisted Montfort with a body of troops at the battle of Lewes: the Cinque ports engaged on the same side, and continued in it after the battle of Evesham. And even those who sided with the crown acted so much upon principles of liberty, and had so much regard to the other party, that after Henry III had prevailed, and quite defeated and ruined the other party, by the battle of Evesham, yet these royalists interposed, and would not suffer him to be absolute, or quite trample upon the other party. They prevailed upon him to grant most of them their estates again, upon a reasonable composition, and to return the city of London its liberties, upon a reasonable fine.

THE earl of Gloucester, who had been in arms for the king, and been a chief means of defeating Montfort, was so solicitous about gaining a reasonable composition for the disinherited, that he took arms again against the king, and possessed himself of London, till the terms were so well settled, that the commons and body of the nation were nearly upon as good a foot of liberty as they were before the war. In like manner, when Edward I had imposed taxes by his own authority, the two great earls of Norfolk and Suffolk went to the Exchequer, and opposed the levying of them. The historians tell us, that the citizens of London came with them; whom they had gained to stand with them for the recovery of their liberties: and, when they came to London armed soon after, the Londoners received them, and let them place guards at their gates.

WHEN Edward the Second's queen landed with but a small body of men, and declared she designed to deliver the nation from the oppressions of the king's favorites, the people flocked to her standard in great numbers. Again, when Richard II had planned designs against the liberties of the kingdom, and sent to the sheriffs to draw in the people against the confederate lords, he had for answer, that the people would not serve against those patriot lords. And how great this general spirit was in favour of those who endeavoured to support the liberties of the nation, appears from the alacrity with which all ranks of people ran to the standard of Henry IV, who, though he landed only with a small body of men, had, in as short a time as they could assemble together, an army of above 60,000 men.

AND

AND yet, during all those times that the generality of the commons of the nation were so ready to fall in with the measures of the great lords, against the crown, in favour of the common liberty, they were not in other respects so much under their influence as some persons have represented them. On the contrary, their representatives often opposed the house of lords in points of importance. There was a petition to Edward II, in parliament, of all the bishops, prelates, counts, barons, and others, requesting, that they might improve their manors, by waste grounds out of the forests. To which the king's council answered, that this could not be done without a new law, to which the commonalty of the land will never assent [i]. In 13 Edward III, the lords granted the tenth of their grain and wool; but the commons would grant no more than 2500 sacks, and those upon condition [k]. In 17 Edward III, the commons, complaining of the abuses of the papal provisions, declare that they could not, nor would, any longer endure them. They desire that a letter may be written to the pope, with complaints against them; and that, if any peers or great men would not seal such a letter, they (the commons) would not hold them well-wishers to the king's profit or theirs [l].

IN 6 Richard II. Rot. Parl. N^o. 52. the commons made a protestation to the king, in which they say, that a pretended statute made against the Lollards, by the king and lords, was never assented to by the commons; and therefore pray that it may be annulled: for it was not their intent to be justified; nor to oblige themselves or their successors to prelates, more than their ancestors had been in times past. By 14 Richard II. cap. 12. and again by 16 Richard II. cap. 2. no liege persons of the king's subjects shall be compelled to answer for their freehold before any lord or lady's council. In 9 Henry IV. Rot. Parl. N^o. 22. the lords sent for certain of the commons, and told them what subsidy they would give the king, and wished them to tell their companions, and advise them to agree thereto. Unto which the commons took great exception, and complained thereof to his Majesty [m]. And in 11 Henry IV, the king, in parliament, told the commons that sith

[i] See Rily's Plac. Parl. p. 6.

[k] Cott. Abridg. p. 19,

[l] Ibid. p. 41.

[m] Ibid. p. 465.

as well the lords as the commons were come to unity, he doubted not that they, the said commons, would not speak any unfitting words, or attempt any thing to the contrary [n].

IN 1552, in the reign of Henry VIII, the commons rejected a bill, sent down from the house of lords, for reforming some abuses, in regard to defeating the title of the crown and lords to wardships: the king was very earnest for it, but the commons would not pass it [o]. From these passages it will appear, what a spirit of liberty, and how much weight in the balance of the constitution, the commons had, even before the civil wars between the houses of York and Lancaster.

IN the course of those wars, the power of the nobility, who, till then, by means of their large estates, dependencies, and numbers, had been very formidable, was very much weakened, by the extinction or ruin of many of the chief families. The authors of the Royal Treasury say, p. 164, that, at Edward the Fourth's first coming to the crown, above 140 considerable persons were attainted by parliament. The nobility were still much more weakened, in the reign of Henry VII, by the acts of parliament then made, giving liberty to them to alienate so much of the estates of those that remained. In the mean time, the power of the commons was increasing, so that, in Henry the Eighth's time, they were grown, in some measure, able to act that part of supporting the liberties of the nation against the attempts of the crown, which the nobility had hitherto done, but were hardly any longer capable of doing effectually.

THE reign of Henry VIII was indeed the greatest crisis, with regard to the preservation of our liberties, that ever happened to this nation. That prince had very great advantages towards making the crown absolute. Lord Herbert observes, that, by the civil wars, many breaches were made to let in the authority of the crown: Henry VII had gained the establishment of the Star-chamber court, with powers not a little arbitrary, which might be made use of, both against the nobility and against the people.

[n] Cott. Abridg. p. 470.

[o] Burnet's Hist. Reformation, vol. i. p. 117.

By the advantage of the Reformation, and by the competition of the protestants and papists for the countenance and protection of the crown, Henry VIII had all the abbey lands thrown, without any condition, into his hands. Those lands, together with what they got from hospitals, chantries, bishoprics, deans and chapters, &c. were certainly not less, if they were not rather more, than a fourth part of all the lands in the kingdom. By the act of submission, &c. he brought the clergy entirely under his power; and the parliament went so far as to make an act of parliament, that his proclamations, not repugnant to any statutes in force, should be received and obeyed as laws. In these circumstances, a prince who had been a deep politician, of great foresight, and desirous of making his successors in the monarchy absolute, as well as himself, might probably have laid such foundations for doing it, as could hardly have failed. For, first, a person of his character, after he had brought the clergy into an entire dependance upon the crown, would probably have then let them continue to enjoy a great part of their lands, which would have been a constant fund of revenue to himself and his successors: and, at the same time, would have continued to the regular prelates, abbots, and priors, who held by barony, their seats in parliament; which would have been, not only the securing to himself a number of votes there, but also the influence of the clergy in their counties, which would have been very great upon the spirits of the people, in favour of the crown. Or, if he had not done this, he would, at least, have favoured the lower clergy, in the desire they had of being admitted to sit by their proctors in convocation, as members of the house of commons, for which pretension they had some considerable reasons to offer, drawn from the antient Saxon constitution, and even from authorities of later date.

INGULPHUS saith, that “in festo nativitatis beatæ Mariæ, cum
 “ universi magnates regni per regium edictum summoniti, tam archie-
 “ piscopi, abbates, clerici, quam totius regni proceres et optimates Lon-
 “ don, convenerunt ad tractandum de negotiis publicis totius regni,
 “ &c.” And in the Rot. Parl. 21 Richard II. N°. 10. there was an instrument of procuration made in parliament, by the archbishops and clergy of both provinces, to Sir Thomas Percy: from whence it appears,

appears, beyond all doubt, that the lower clergy had a right to be and act in parliament, as well as by the bishops. And, from what follows, it appears, that this procuratorial instrument must have been granted to Sir Thomas Percy by the lower clergy, as well as by the bishops. For when, soon after, at the end of this parliament, an oath was taken by all the states, to maintain perpetually the statutes &c. passed in this parliament, the bishops, abbots, and priors, took this oath first; then, the temporal lords; then, the knights of the shires, &c. then Sir Thomas Percy took this oath for the whole clergy, who must therefore have been the body of the lower clergy, because the bishops, &c. had sworn before [p].

OR if Henry VIII had resolved not to take any course so much in favour of the clergy, he should, at least, have kept the greatest part of the abbey and clergy lands in the crown; or if he disposed of any them to lay hands, it should have been done upon not very long leases, with considerable reserved rents, and subject to tenures in capite, and dispersed them into as many families as he could; by which means he would have had most of the estates of the kingdom in subjection to him.

BUT farther, if that prince, at the same time that he encouraged trade in some measure, had also made laws, that should have prevented trade from putting its owners upon too high a foot; and have procured the aids, for the public service, to have been raised from such taxes as would have affected the trading part of the community, at least as much as the gentry and clergy; whereby the latter would be taxed upon a very favourable foot: I say, had Henry VIII and his successors pursued such measures for some length of time, the crown might have damped, and at length, by degrees, quite broke and subdued that strong spirit of liberty, which, partly from the climate, and partly from long custom, was prevalent in the mass of the people.

BUT, very happily for our nation, this prince, who was much governed by his passions, especially his vanity and self-sufficiency, imagined that his successors might govern as he had done; but never took any measures that might enable them to do it. On the contrary, he took measures,

[p] See Brady's Richard II. p. 400.

which in the natural course of things must prevent them from doing it. He dissipated the church lands among his courtiers, among whom several were commoners, by absolute gift, without reserving any considerable quit-rents or payments to the crown. He gave way to the clergy's being brought upon a very low foot, even with those lands that were left to them; because he caused several laws to be made to their disadvantage; and, it is most probable, he was the means of hindering the inferior clergy from being received into the house of commons as a part of the legislature. At the same time, trade beginning to encrease very much, after the discovery of both the Indies, and the wealth arising from thence coming chiefly among the commons; and the estates of the nobility having been made alienable; many of their estates, and those of the church, came, in no long time, into the hands of the commons, whose power and dependencies, as well as their spirits, were thereby much exalted.

S E C T. VI.

After Henry the Eighth's Reign, their Freedom was placed on a secure Bottom.

UPON the death of Henry VIII, the duke of Somerset, protector in the reign of Edward VI, took the party of the people, against the noblesse, and gave way to repealing the act which gave the force of law to the proclamations of the crown, and to making some others, not very favourable to the prerogative. And in order to have advantage of some more of the church lands, he and some other ministers of that and the next reign, a good deal encouraged the presbyterian party, in ecclesiastical matters; which party, like its authors abroad, were most of them of antimonarchical spirit, and contributed to diffuse that or at least a spirit of very much liberty, as much as they could, through the nation. And they succeeded so much, that Queen Elizabeth and her council were, at length, very sensible of the too great increase of this spirit among the people, as well as that by the over weight of property acquired

acquired by them, the balance was turning, or turned, on their side against the lords, and even the crown when joined with them. She knew that this would some time or other endanger the crown: but it was too late to oppose it; and, therefore, tho' that wise queen sometimes spoke and governed with the spirit of her father, yet she was at other times obliged to make court to her people. Harrington observes that her reign was a series of love tricks, between her and the people; and Mr. Rapin says, she was trop comedienne.

JAMES I knew as well as she where the weakness of the constitution lay, or how much the power of the crown was declined: indeed the house of commons made him feel it: and, in order to prop it up, he endeavoured to raise the power of the clergy, as a support to the crown; and to infuse principles of reverence to it, from the sacredness of hereditary right, the doctrine of passive obedience, and the like. But he undertook this work too late; besides, he did not manage it with sufficient address to carry it so far as it might otherwise have gone. The consequence of which was found very sensibly, and produced terrible effects, in the reign of Charles I. That unhappy prince, filled with lofty notions about the original inherent rights of the crown, did not consider that rights, if they had been such, will do nothing without power to support them, and that the effective power was vastly against the crown; because the mass of the people, in whom was lodged the far greatest part of the wealth and strength of the nation, would be against all such pretensions to absolute power. Indeed it was found, that the bulk of the nobility and gentry were almost as much inclined to oppose those pretensions to arbitrary power as the people.

It is true, many or most of the nobility, upon the crown's having given up those pretensions, did take its part, before the beginning of the war in 1641. But the puritan and republican spirit that had been raised, could not be laid again; and was of itself sufficient, as it proved, to subvert the monarchy. After the miserable confusions of those times had made people weary, and produced the Restoration, Charles II thought it was a time, when the nation were warmly zealous for monarchy, to try to make himself absolute, and some of his ministers were for it; but those wise and great men, the earls of Clarendon and Southampton,

saw it would not do, and so diverted him from trying it, in the beginning of his reign. They even caused him to give up the tenures by knights service, which was indeed as much a weakening to the crown, as it was an advantage to the gentry of England.

JAMES II, however, could not forbear trying the same thing, and upon the same principles that his father had done; but he found too that nature would not rebel against principle, in the most zealous asserters of passive obedience; and that the bulk of the nation thought that their rights were just as well as valuable, and would defend them accordingly. The ill-judging zeal and hauteur of this king, in pushing things to extremity, brought on the Revolution: which being happily and soon, and without bloodshed, effected, put the constitution upon the foot it is at present; and though, as I have already observed, it may not be quite perfect, yet I will venture to say the condition of the nation is, taking all things together, as happy as any nation either now is, or perhaps ever was. For, by an act of 12 and 13 William III, intitled, An act for the limitation of the crown, sect. 14. the laws are declared to be the birth-right of the people of this realm; and all the kings, who shall ascend the throne of this realm, ought to administer the government of the same, according to the said laws; and all their officers and ministers ought to serve them respectively according to the same.

MANY of the republics of antiquity, by giving too much to the mass of the people, were almost all very much troubled with seditions; and Lacedæmon and those others that were not, were, in order to prevent them, obliged to deny themselves many of the conveniencies of life. If any modern commonwealth, as Venice, Holland, or Switzerland, seem to have more appearance of liberty, they have not so in reality. The government is more severe and more strict upon private subjects. Sweden did lately, indeed, recover in some respects rather more liberty than we; but at present the aristocratical form of government prevails in that kingdom, of all governments the most oppressive to the commonalty of people; besides, Sweden was always much less free than us in point of religion; and it has a much less happy climate, and less plenty of all things conducive to the ease and pleasure of life. So that, taking all things together, I say we are, at present, as happy

as any nation can reasonably expect to be. The only consideration that can fall in to disquiet us is, whether we are likely to enjoy this happiness? *i. e.* whether this establishment, as to its principal parts, is likely to be permanent, or not? for, if it be not, this circumstance must be an abatement even to our present happiness. Now, as to this point, one ought not perhaps to pretend to judge what will certainly come to pass; but, as there may be some means of making a probable judgment, I shall endeavour, in the following sheets, to throw all the light I can on this matter.

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TRACT IV.

Of the Antiquities of the Commons in Parliament.

AS an enquiry into the antient state of the commons in parliament will tend to shew what the original constitution of this nation was, I shall endeavour, by setting forth my own observations, to throw some new light upon this matter. Now here it may be first observed, as a general consideration of some weight, that the upper part of a nation, where they have the authority of government solely in their hands, will always be for keeping the low people under, and not be for granting them any great privileges: we have seen that this has been the case in several nations.

SINCE therefore it appears that the people of the lower ranks, among the Saxons, had actually great privileges, and a very free spirit, it is natural to suppose that they must have had some part in the choice of their legislators. It is of farther weight in this case, that, as I observed above, the Northern nations, from among whom our Saxon ancestors came, had a third and even a fourth estate in their legislatures. The burghers and peasants made originally a part of their great councils, as well as the nobility and clergy: and their colonies having been used to this privilege at home, it is not likely they should be willing to lose it in those public constitutions of government which they made in their foreign expeditions. In fact, it appears that some of the Northern colonies, that went abroad, did not lose this privilege. Otho Frisingens. de Gest. Imp. Fred. cap. 13. p. 241. says of the Lombards, “*tantopere libertatem affectant, ut potestatis insolentiam fugiendo, consulum potius quam imperantium reguntur arbitrio: cumque tres inter eos ordines, i. e. capitaneorum, valvasorum, et plebis esse noscuntur, ad reprimendam superbiam, non de uno sed de singulis prædicti consules eligantur.*” And the same author observes, p. 241, “*igitur rege (i. e. imper. Freder.) apud Roncalias quinque, ut aiunt, dies sedente, et ex principum ac de universis pene civitatibus consulum seu majorum conventu curiam celebrante, diversa hinc inde diversis in queremoniis emergere negotia.*”

THE

THE curia here mentioned is the same as a general assembly, or placitum, or mallum, which was often called curia, from whence the Spanish cortes had its name. And we see the consules, who were members of it, were chosen by the lower people, among the Lombards, as well as by the chieftains. Now that these Lombards came from the same Northern countries with our Saxon ancestors, and had even many Saxons mixed with them, we are informed by very good authority. Paulus Diaconus, who was himself a Lombard, tells us, that the Saxons were mixed with the Lombards in their expedition into Italy [q]. And that the custom was the same in Germany, appears from Radevicus, lib. ii. de Gest. Frederici. “Confluunt ex omnibus regni partibus cum
 “magnâ frequentia archiepiscopi multique alii ecclesiastici viri, duces,
 “marchiones, comites, proceres, consules, et civitatum judices. Idem
 “expresse dicit Guntherus: Prælati, proceres, missique potentibus
 “urbis.” The same thing appears to have been customary in Germany in yet later times. Wippo, de vita Conradi Salici, edit. Francof. ad Moen. A. D. 1654, in his chapter intitled, de Electione Regis, describes a great council, or confluence of people near Worms, at their going upon the election, p. 426. “Confedere principes, populus frequentissimus astabat. Archiepiscopus Moguntinus rogatus a populo
 “quid sibi videretur, elegit majoris ætatis chunonem, in dominum et
 “regem. Hanc sententiam cæteri archiepiscopi et reliqui sacrorum ordinum viri indubitanter sequebantur. Junior chuno illum elegit.
 “Tunc singuli de singulis regnis eadem verba electionis sæpissime repetebant. Fit clamor populi, omnes unanimiter in regis electione principibus consentiebant.” This was in A. D. 1024; and the same author says that A. D. 1028, “Imperator Conradus filium suum Henricum, principibus regni, cum tota multitudine id probantibus, in regalem apicem apud Aquisgranum sublimari fecit.” The case was the same in the lower part of Germany or Belgium. “Penes utrumque ordinem nobilium et oppidanæ plebis reipublicæ cura fuit [r].”
 Now since, from these passages, it appears, that the Northern people, and particularly the Saxons, did retain in their foreign settlements,

[q] Sigon. de Regn. Ital. p. 6.

[r] Grot. Annal. lib. p. 4.

the same privilege which they had at home, of having a share in the great councils or legislature of their countries, it is highly probable that our Saxon ancestors did the same here in England, that their countrymen did in Italy and Germany. And for the truth of this indeed we have considerable evidence, from several antient writings now extant, which give an account of the state of those times. Most of them are either relations of councils, or extracts from charters, said to have been in those times. With regard to which, however, before I produce them, I would not promise that all of them are genuine, that is to say, made at the very time, and by those persons to whom they are ascribed. There is reason to think that some of them might be forged, by the monks, in the time of William the Conqueror, or soon afterwards, when their titles to their lands were contested. But, even admitting this to be the case, they may nevertheless be of considerable weight towards proving the point for which I intend them: because it is evident that, if any of them were forged, they were forged not long after the Conquest: and learned men at that time, as they must have known what was the state of things, as to the legislature in the Saxon times, so they would certainly have taken care to make their charters represent things agreeable to fact. Besides, had they not done so, this would have been a certain sign to the king and the great men, who must have known how the legislature then was, that these charters, which did not agree with it, were false: on that account therefore they may serve our purpose, whether they be really genuine or not.

IN Spelman's councils[s], it is said, that, about the year 712, King Ina assembled a great council, wherein several things "ad concordiam publicam promovendam" were done, "per commune concilium et assensum omnium episcoporum, et principum, comitum, et omnium sapientum, seniorum, et populorum totius regni." And agreeably to this, Bede, in his Ecclesiastical History, lib. i. tells us, that the grand league and union between the Britons, Saxons, and Picts, was concluded and confirmed, "per commune concilium et assensum omnium episcoporum, procerum, comitum, et sapientum, seniorum, et populorum, et per præceptum regis Inæ."

[s] Tom. i. p. 219.

IN the account of the council of Calchuth given to pope Adrian I, and related in the Magdeburg Centuriators, cent. viii. chap. 9. p. 575. it is said, “Hæc decreta, beatissime, in concilio publico coram rege
“Aclfwaldo, et archiepiscopo Eanbaldo, et omnibus episcopis, abbatibus,
“regionis, seu senatoribus et ducibus, et populo terræ proposuimus;
“et illi, ut superius fati sumus, cum omni devotione mentis juxta pos-
“sibilitatem virium suarum, adjuvante supernâ clementiâ, se in omni-
“bus custodire decreverunt.” In the gift of the tithes to the clergy, by Ethelwolp, at Winchester, A. D. 855, it is said to have been made, “præsentibus archiepiscopis et episcopis Angliæ universis; nec non
“Beorredo rege Merciæ, et Edmundo East-Anglorum rege, abbatum,
“abbatissarum, ducum, comitum, procerumque totius terræ, aliorum-
“que fidelium infinita multitudine; qui omnes regium chirographum
“laudaverunt, dignitates vero nomina subscripserunt [t].” A charter of Hardecanute is said to have passed, “cum assensu, laude et con-
“silio suorum archiepiscoporum, abbatum, monachorum, clericorum,
“et regni sui devotorum, procerum et cæterorum minoris ordinis gre-
“gariorum militum.”

IN these above cited charters, and others, we see, that though the terms used are seldom the same, yet there are almost always some expressions that represent the commons or lower sort of people, as well as the nobility, to have assisted at those great councils or parliaments at which the charters were passed; and to have given their consent to them, if not by their subscriptions, yet at least by their acclamations; which I have before observed to have been the way practised by the people of Germany. Now such a concurrence of sentiments in a number of writers, who certainly lived not long after the Conquest, and their concurrence in such a point, as who were members of the Saxon great councils, which they could not but have known at that time, and durst not have misrepresented; such a concurrence, I think, deserves to be esteemed a proof of considerable weight, that the commons were then usually present, and some way parties to those national assemblies.

[t] Ingulph. Hist. p. 863.

BUT, besides these charters, there are extant one or two pieces, which appear to belong to the Saxon times, and which indeed have so great marks of genuineness, that I cannot but lay a good deal of stress upon them. One of them is a letter or address sent from the council of Feversham, held about A. D. 930, to King Athelstan their sovereign. It is in the following words, as we have them in the Chronicle of Brompton, p. 850. "AD ATHELSTANUM REGEM. Karissime, Epi-
 "scopi tui de Kent, et omnis Kentweire, Theyni, comites, et villani,
 "tibi domino dilectissimo suo gratias agunt quod nobis de pace nostra
 "præcipere voluisti, et de commodo nostro perquirere et consulere, quia
 "magnum opus est inde nobis divitibus et egenis. Et hoc incepimus
 "quantâ diligentia potuimus consilio horum sapientum quos ad nos mi-
 "fisti: unde, charissime domine, primum est de nostrâ decimâ, ad
 "quam valde cupidi sumus et voluntarii, et tibi supplices gratias agi-
 "mus admonitionis tuæ. Secundum est de pace nostrâ quam omnis
 "populus teneri desiderat, sicut apud Greatleyam sapientes tui posuerunt,
 "et sicut etiam nunc dictum est concilio apud Fefresham. Tertium est,
 "quod omnes misericorditer Hermerum dominum suum de dono quod
 "foris factis hominibus concessisti, hoc est, quod pardonatur omnibus
 "forisfactura de quocunque furto quod ante concilium de Fefresham
 "factum fuit; eo tenore quo semper deinceps ab omni malo quiescant,
 "et omne latrocinium confiteantur trine ad Augustum. Quartum,
 "ne aliquis recipiat hominem alterius sine licentiâ ipsius cui prius fol-
 "gerit, nec intra marcum, nec extra; et etiam ne dominus libero
 "homini hlafoeam interdicat, si recte custodierit eam. Quintum, qui
 "ex hoc discedat, sit dignus eorum quæ in scripto pacis habentur
 "quod apud Greatleyam institutum est. Sextum, si aliquis homo sit
 "adeo dives, vel tantæ parentelæ quod castigari non possit, vel illud
 "cessare nolit, ut efficias qualiter abstrahatur in aliam partem regni tui:
 "sicut dictum est in residuis partibus sit alterurtum quod sit, sit comitum,
 "sit villanorum. Septimum est, ut omnis homo teneat homines suos
 "in fidejussione suâ contra omne furtum; si tunc sit aliquis qui tot
 "homines habeat quos non sufficiat omnes custodire, præpositum talem
 "præponat sibi singulis villis qui credibilis ei sit et qui concedat homini-
 "bus. Et si præpositus alicui eorum hominum concedere non au-
 "deat,

“ deat, inveniatur 12 plegeos cognationis suæ qui ei stent in fidejussione. Et
 “ si dominus, vel præpositus, vel aliquis hoc infringat, vel abhinc exeat,
 “ dignus sit eorum quæ apud Greatleyam dicta sunt, nisi regi magis
 “ placeat alia justitia. Octavaum, quod omnibus placuit de scutorum
 “ opere sicut dixisti. Precamur, domine, misericordiam tuam, sit in hoc,
 “ ut in alterutrum vel nimis vel minus; et hoc emendare habeas juxta
 “ velle tuum: et nos devotè parati sumus ad omnia quæ nobis præcipe-
 “ re velis quæ unquam aliquatenus implere valeamus.”

IN this piece, which gives a very natural account of the turbulent uncivilized state of those times, we see that the regulations made for preserving the peace, &c. were made by the consent of the villani, as well as of the theyns and comites. They are all joined in the address: which never would have been, unless the first sort of men, *i. e.* the citizens and burgeses, had some share in the legislature, as well as the theynes and comites. And this indeed is farther confirmed by a collection of ordinances or laws made, not long after that time, in the great council of London held under the same King Athelstan, and confirmed by him. The title of this collection, which is published in Dr Wilkins's collection of Saxon laws, is *Judicia Civitatis Londini*. And they begin thus: “ Hoc est consilium quod episcopi et præfecti, qui ad curiam
 “ Londinensem pertinebant, edixerunt et juramentis confirmaverunt in
 “ nostris foederatum sodalitiis tam comites quam coloni.”

THIS piece consists mostly of regulations made for preserving the peace and property of every one against those thieves who then much abounded; for preventing their being harboured or protected by any men of power or wealth; for the discovery, the pursuit, and the punishments of them, when they are taken. These punishments were to be either fines, or, in some cases, death; and, in the pursuit of the thieves from one province to another, the several officers of the provinces are ordered to give their assistance to the pursuers, which circumstances plainly shew that they who made these ordinances must have had a share in the legislature, and that they knew they would be authoritative on receiving the king's assent and confirmation; which were actually given to them, as appears by the final clause. Now the *ceorliffe*, or *coloni*, would never have been mentioned, as present in this council, and parties

to the regulations made in it, unless they had actually been so, and therefore it is reasonable to conclude they were. In one of the Confessor's laws (viz. the 8th), which speaks of bees, how tithes ought to be paid of them, and of other things, it is said, "*hæc concessa sunt a rege, baronibus, et populo.*"

BUT farther, in order to shew the weight which the commons had in public affairs, it is observable, that, in 1017, King Ethelred being dead, the proceres which were in London, and the citizens, chose Edmund king. Florence of Worcester, and out of him Hoveden, says, "*cives Londonienses et pars nobilium, qui eo tempore consistebant Londonia, Clitonem Edmundum unanimi consensu in regem levavere.*" Again, in 1040, Harold was chosen king, in opposition to Hardicanute, by Earl Leofric, and the mariners of London, and almost all the Thanes north of Thames: so says the Saxon Chronicle. And William of Malmesbury, speaking of Harold's answer to William the Conqueror's claim to the crown, represents Harold to have said, "*de regno præsumtuosum fuisse quod absque generali senatus et populi conventu et edicto, alienam illi hæreditatem juraverit.*" Malmesbury, says Dr. Hody [u], wrote within sixty years after that time, and was well skilled in the history and antiquities of this nation; and so his authority should be of great weight, notwithstanding Dr. Brady despises it.

To the abovementioned arguments from antient charters, laws, and historians, may be added another argument drawn from the case of tenants in antient demesne, who have claimed a privilege, from beyond all times of memory, to be free from being taxed to contribute to the wages of knights serving for the counties, in parliament. This appears from a writ in the old Register, fol. 261, which is there put down as a form for drawing all writs of the like kind. "*Rex vicecomiti L. Salutem.—Monstraverunt nobis homines et tenentes de manerio de F. quod est de antiquo dominico coronæ Angliæ, ut dicitur; quod licet ipsi et eorum antecessores tenentes de eodem manerio a tempore quo non extat memoria semper hætenus quieti esse consueverunt de expensis militum ad parliamenta nostra et progenitorum nostrorum Regum Angliæ pro commu-*

[u] Convocat, p. 123

"nitate dicti comitatus venientium, &c." And that, notwithstanding this, the sheriff distrains the said tenants to contribute to the expences of the knights that came to the last parliament; therefore the king commands the sheriff to desist from his distress. This writ was given about the 15th year of Edward II; and there is extant yet a perfecter writ of this kind, of 50 Edward III, in which that king sends a superfe-deas to the sheriff, in favour of certain tenants of lands in gavelkind, who claimed that hitherto, "a tempore quo non extat memoria," they had been, and ought to be, free from contributing to the expences of knights of the shire.

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TRACT IV.

Of the Antiquities of the Commons in Parliament.

AS an enquiry into the antient state of the commons in parliament will tend to shew what the original constitution of this nation was, I shall endeavour, by setting forth my own observations, to throw some new light upon this matter. Now here it may be first observed, as a general consideration of some weight, that the upper part of a nation, where they have the authority of government solely in their hands, will always be for keeping the low people under, and not be for granting them any great privileges: we have seen that this has been the case in several nations.

SINCE therefore it appears that the people of the lower ranks, among the Saxons, had actually great privileges, and a very free spirit, it is natural to suppose that they must have had some part in the choice of their legislators. It is of farther weight in this case, that, as I observed above, the Northern nations, from among whom our Saxon ancestors came, had a third and even a fourth estate in their legislatures. The burghers and peasants made originally a part of their great councils, as well as the nobility and clergy: and their colonies having been used to this privilege at home, it is not likely they should be willing to lose it in those public constitutions of government which they made in their foreign expeditions. In fact, it appears that some of the Northern colonies, that went abroad, did not lose this privilege. Otho Frisingens. de Gest. Imp. Fred. cap. 13. p. 241. says of the Lombards, “tantopere libertatem affectant, ut potestatis insolentiam fugiendo, consulum potius quam imperantium reguntur arbitrio: cumque tres inter eos ordines, *i. e.* capitaneorum, valvasorum, et plebis esse noscuntur, ad reprimendam superbiam, non de uno sed de singulis prædicti consules eligantur.” And the same author observes, p. 241, “igitur rege (*i. e.* imper. Freder.) “apud romalias quinque, ut aiunt, dies sedente, et ex principum ac de universis pene civitatibus consulum seu majorum conventu curiam celebrante, “diversa hinc inde diversis in queremoniis emergere negotia.”

THE

THE curia here mentioned is the same as a general assembly, or placitum, or mallum, which was often called curia, from whence the Spanish cortes had its name. And we see the consules, who were members of it, were chosen by the lower people, among the Lombards, as well as by the chieftains. Now that these Lombards came from the same Northern countries with our Saxon ancestors, and had even many Saxons mixed with them, we are informed by very good authority. Paulus Diaconus, who was himself a Lombard, tells us, that the Saxons were mixed with the Lombards in their expedition into Italy [q]. And that the custom was the same in Germany, appears from Radevicus, lib. ii. de Gest. Frederici. “Confluunt ex omnibus regni partibus cum
 “magnâ frequentia archiepiscopi multique alii ecclesiastici viri, duces,
 “marchiones, comites, proceres, consules, et civitatum judices. Idem
 “expresse dicit Guntherus: Prælati, proceres, missique potentibus
 “urbis.” The same thing appears to have been customary in Germany in yet later times. Wippo, de vita Conradi Salici, edit. Francof. ad Moen. A. D. 1654, in his chapter intitled, de Electione Regis, describes a great council, or confluence of people near Worms, at their going upon the election, p. 426. “Confedere principes, populus frequentissimus astabat. Archiepiscopus Moguntinus rogatus a populo
 “quid sibi videretur, elegit majoris ætatis chunonem, in dominum et
 “regem. Hanc sententiam cæteri archiepiscopi et reliqui sacrorum ordinum viri indubitanter sequebantur. Junior chuno illum elegit.
 “Tunc singuli de singulis regnis eadem verba electionis sæpissime repetebant. Fit clamor populi, omnes unanimiter in regis electione principibus consentiebant.” This was in A. D. 1024; and the same author says that A. D. 1028, “Imperator Conradus filium suum Henricum, principibus regni, cum tota multitudine id probantibus, in regalem apicem apud Aquisgranum sublimari fecit.” The case was the same in the lower part of Germany or Belgium. “Penes utrumque ordinem nobilium et oppidanæ plebis reipublicæ cura fuit [r].”
 Now since, from these passages, it appears, that the Northern people, and particularly the Saxons, did retain in their foreign settlements,

[q] Sigon. de Regn. Ital. p. 6.

[r] Grot. Annal. lib. p. 4.

the same privilege which they had at home, of having a share in the great councils or legislature of their countries, it is highly probable that our Saxon ancestors did the same here in England, that their countrymen did in Italy and Germany. And for the truth of this indeed we have considerable evidence, from several antient writings now extant, which give an account of the state of those times. Most of them are either relations of councils, or extracts from charters, said to have been in those times. With regard to which, however, before I produce them, I would not promise that all of them are genuine, that is to say, made at the very time, and by those persons to whom they are ascribed. There is reason to think that some of them might be forged, by the monks, in the time of William the Conqueror, or soon afterwards, when their titles to their lands were contested. But, even admitting this to be the case, they may nevertheless be of considerable weight towards proving the point for which I intend them : because it is evident that, if any of them were forged, they were forged not long after the Conquest : and learned men at that time, as they must have known what was the state of things, as to the legislature in the Saxon times, so they would certainly have taken care to make their charters represent things agreeable to fact. Besides, had they not done so, this would have been a certain sign to the king and the great men, who must have known how the legislature then was, that these charters, which did not agree with it, were false : on that account therefore they may serve our purpose, whether they be really genuine or not.

IN Spelman's councils[s], it is said, that, about the year 712, King Ina assembled a great council, wherein several things "ad concordiam publicam promovendam" were done, "per commune concilium et assensum omnium episcoporum, et principum, comitum, et omnium sapientum, seniorum, et populorum totius regni." And agreeably to this, Bede, in his Ecclesiastical History, lib. i. tells us, that the grand league and union between the Britons, Saxons, and Picts, was concluded and confirmed, "per commune concilium et assensum omnium episcoporum, procerum, comitum, et sapientum, seniorum, et populorum, et per præceptum regis Inæ."

IN the account of the council of Calchuth given to pope Adrian I, and related in the Magdeburg Centuriators, cent. viii. chap. 9. p. 575. it is said, “Hæc decreta, beatissime, in concilio publico coram rege
 “Aelfwaldo, et archiepiscopo Eanbaldo, et omnibus episcopis, abbatibus,
 “regionis, seu senatoribus et ducibus, et populo terræ proposuimus;
 “et illi, ut superius fati sumus, cum omni devotione mentis juxta pos-
 “sibilitatem virium suarum, adjuvante supernâ clementiâ, se in omni-
 “bus custodire decreverunt.” In the gift of the tithes to the clergy, by Ethelwolph, at Winchester, A. D. 855, it is said to have been made,
 “præsentibus archiepiscopis et episcopis Angliæ universis; nec non
 “Beorredo rege Merciæ, et Edmundo East-Anglorum rege, abbatum,
 “abbatissarum, ducum, comitum, procerumque totius terræ, aliorum-
 “que fidelium infinita multitudine; qui omnes regium chirographum
 “laudaverunt, dignitates vero nomina subscripserunt [t].” A char-
 ter of Hardecanute is said to have passed, “cum assensu, laude et con-
 “silio suorum archiepiscoporum, abbatum, monachorum, clericorum,
 “et regni sui devotorum, procerum et cæterorum minoris ordinis gre-
 “gariorum militum.”

IN these above cited charters, and others, we see, that though the terms used are seldom the same, yet there are almost always some expressions that represent the commons or lower sort of people, as well as the nobility, to have assisted at those great councils or parliaments at which the charters were passed; and to have given their consent to them, if not by their subscriptions, yet at least by their acclamations; which I have before observed to have been the way practised by the people of Germany. Now such a concurrence of sentiments in a number of writers, who certainly lived not long after the Conquest, and their concurrence in such a point, as who were members of the Saxon great councils, which they could not but have known at that time, and durst not have misrepresented; such a concurrence, I think, deserves to be esteemed a proof of considerable weight, that the commons were then usually present, and some way parties to those national assemblies.

[t] Ingulph. Hist. p. 863.

BUT, besides these charters, there are extant one or two pieces, which appear to belong to the Saxon times, and which indeed have so great marks of genuineness, that I cannot but lay a good deal of stress upon them. One of them is a letter or address sent from the council of Feversham, held about A. D. 930, to King Athelstan their sovereign. It is in the following words, as we have them in the Chronicle of Brompton, p. 850. "AD ATHELSTANUM REGEM. Karissime, Episcopi tui de Kent, et omnis Kentweire, Theyni, comites, et villani, tibi domino dilectissimo suo gratias agunt quod nobis de pace nostra præcipere voluisti, et de commodo nostro perquirere et consulere, quia magnum opus est inde nobis divitibus et egenis. Et hoc incepimus quantâ diligentia potuimus consilio horum sapientum quos ad nos misisti: unde, charissime domine, primum est de nostrâ decimâ, ad quam valde cupidi sumus et voluntarii, et tibi supplices gratias agimus admonitionis tuæ. Secundum est de pace nostrâ quam omnis populus teneri desiderat, sicut apud Greatleyam sapientes tui posuerunt, et sicut etiam nunc dictum est concilio apud Fefresham. Tertium est, quod omnes misericorditer Hermerum dominum suum de dono quod foris factis hominibus concessisti, hoc est, quod pardonatur omnibus forisfactura de quocunque furto quod ante concilium de Fefresham factum fuit; eo tenore quo semper deinceps ab omni malo quiescant, et omne latrocinium confiteantur trine ad Augustum. Quartum, ne aliquis recipiat hominem alterius sine licentiâ ipsius cui prius folgerit, nec intra marcum, nec extra; et etiam ne dominus libero homini hiasocam interdicat, si recte custodierit eam. Quintum, qui ex hoc discedat, sit dignus eorum quæ in scripto pacis habentur quod apud Greatleyam institutum est. Sextum, si aliquis homo sit adeo dives, vel tantæ parentelæ quod castigari non possit, vel illud cessare nolit, ut efficias qualiter abstrahatur in aliam partem regni tui: sicut dictum est in residuis partibus sit alterurtum quod sit, sit comitum, sit villanorum. Septimum est, ut omnis homo teneat homines suos in fidejussione suâ contra omne furtum; si tunc sit aliquis qui tot homines habeat quos non sufficiat omnes custodire, præpositum talem præponat sibi singulis villis qui credibilis ei sit et qui concedat hominibus. Et si præpositus alicui eorum hominum concedere non audeat,

“ deat, inveniatur 12 plegios cognationis suæ qui ei stent in fidejussione. Et
 “ si dominus, vel præpositus, vel aliquis hoc infringat, vel abhinc exeat,
 “ dignus sit eorum quæ apud Greatleyam dicta sunt, nisi regi magis
 “ placeat alia justitia. Octavaum, quod omnibus placuit de scutorum
 “ opere sicut dixisti. Precamur, domine, miserecordeiam tuam, sit in hoc,
 “ ut in alterutrum vel nimis vel minus; et hoc emendare habeas juxta
 “ velle tuum: et nos devotè parati sumus ad omnia quæ nobis præcipe-
 “ re velis quæ unquam aliquatenus implere valeamus.”

IN this piece, which gives a very natural account of the turbulent uncivilized state of those times, we see that the regulations made for preserving the peace, &c. were made by the consent of the villani, as well as of the theyns and comites. They are all joined in the address: which never would have been, unless the first sort of men, *i. e.* the citizens and burgeses, had some share in the legislature, as well as the theynes and comites. And this indeed is farther confirmed by a collection of ordinances or laws made, not long after that time, in the great council of London held under the same King Athelstan, and confirmed by him. The title of this collection, which is published in Dr Wilkins's collection of Saxon laws, is *Judicia Civitatis Londini*. And they begin thus: “ Hoc est consilium quod episcopi et præfecti, qui ad curiam
 “ Londinensem pertinebant, edixerunt et juramentis confirmaverunt in
 “ nostris foederatum sodalitiis tam comites quam coloni.”

THIS piece consists mostly of regulations made for preserving the peace and property of every one against those thieves who then much abounded; for preventing their being harboured or protected by any men of power or wealth; for the discovery, the pursuit, and the punishments of them, when they are taken. These punishments were to be either fines, or, in some cases, death; and, in the pursuit of the thieves from one province to another, the several officers of the provinces are ordered to give their assistance to the pursuers, which circumstances plainly shew that they who made these ordinances must have had a share in the legislature, and that they knew they would be authoritative on receiving the king's assent and confirmation; which were actually given to them, as appears by the final clause. Now the *ceorliffe*, or *coloni*, would never have been mentioned, as present in this council, and parties

to the regulations made in it, unless they had actually been so, and therefore it is reasonable to conclude they were. In one of the Confessor's laws (viz. the 8th), which speaks of bees, how tithes ought to be paid of them, and of other things, it is said, "*hæc concessa sunt a rege, baronibus, et populo.*"

BUT farther, in order to shew the weight which the commons had in public affairs, it is observable, that, in 1017, King Ethelred being dead, the procures which were in London, and the citizens, chose Edmund king. Florence of Worcester, and out of him Hoveden, says, "*cives Londonienses et pars nobilium, qui eo tempore consistebant Londonia, Clitonem Edmundum unanimi consensu in regem levavere.*" Again, in 1040, Harold was chosen king, in opposition to Hardicanute, by Earl Leofric, and the mariners of London, and almost all the Thanes north of Thames: so says the Saxon Chronicle. And William of Malmesbury, speaking of Harold's answer to William the Conqueror's claim to the crown, represents Harold to have said, "*de regno præsumtuosum fuisse quod absque generali senatus et populi conventu et edicto, alienam illi hæreditatem juraverit.*" Malmesbury, says Dr. Hody [u], wrote within sixty years after that time, and was well skilled in the history and antiquities of this nation; and so his authority should be of great weight, notwithstanding Dr. Brady despises it.

To the abovementioned arguments from antient charters, laws, and historians, may be added another argument drawn from the case of tenants in antient demesne, who have claimed a privilege, from beyond all times of memory, to be free from being taxed to contribute to the wages of knights serving for the counties, in parliament. This appears from a writ in the old Register, fol. 261, which is there put down as a form for drawing all writs of the like kind. "*Rex vicecomiti L. Salutem.—Monstraverunt nobis homines et tenentes de manerio de F. quod est de antiquo dominico coronæ Angliæ, ut dicitur; quod licet ipsi et eorum antecessores tenentes de eodem manerio a tempore quo non extat memoria semper hæctenus quieti esse consueverunt de expensis militum ad parliamenta nostra et progenitorum nostrorum Regum Angliæ pro commu-*

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“nitate dicti comitatus venientium, &c.” And that, notwithstanding this, the sheriff distrains the said tenants to contribute to the expences of the knights that came to the last parliament; therefore the king commands the sheriff to desist from his distress. This writ was given about the 15th year of Edward II; and there is extant yet a perfecter writ of this kind, of 50 Edward III, in which that king sends a superseas to the sheriff, in favour of certain tenants of lands in gavelkind, who claimed that hitherto, “a tempore quo non extat memoria,” they had been, and ought to be, free from contributing to the expences of knights of the shire.

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I CANNOT forbear to think, therefore, that this adds no small weight to the other arguments I have produced for the antiquity of the commons, as a part of the legislature in parliament. I am not indeed clear, that they were always there as they are at present, represented by knights, citizens, and burgeses. I am inclined to be of opinion, that the cities and burghs appeared there, by their elected magistrates, their aldermen and tungereves; and the freeholders by their sheriffs,

sheriffs, heretocks, and coroners; all whom the freeholders chose: and it is not improbable that, besides these, the thanes or gentlemen, who had a certain estate, perhaps five hides of land held of the king, might also have a right, or be under an obligation, to attend the great councils. For a charter of Henry I is thus ascribed, "*testibus archiepiscopis, episcopis, comitibus, baronibus, vice-comitibus, et optimatibus totius regni Angliæ, apud Westmonasterium quando ego coronatus fui [y].*" But, however this was, in general it seems to be sufficiently evident, that the commonalty, as well as the nobility, had originally, and during all the Saxon times, some share in the legislature; and that from thence they derived the great privileges, and the free spirit, they are known to have always had, before the Norman Conquest.

BUT, at the Conquest, the case was a good deal altered. William I seems to have born hard upon the cities and towns: as those bodies of men do not appear to have been at that time a part of the legislature in Normandy, so it was his interest not to let them continue to be so here, because he could not expect to influence them so well as he might the land-holders. Many or perhaps most of the land estates were by him disposed of to his creatures; or were, by him, at least, subjected to a tenure which gave him a great command over them. But the inhabitants of cities and burghs were not so easy to be brought into, or made constantly to comply with, his measures; and therefore he seems to have born the harder upon them: and this appears very plain from several considerations. From Domesday book, we find he even doubled those fee-farm-rents, which several cities had paid to the crown in the time of Edward the Confessor. York, for instance, then paid 53 *l.* but, after the Conquest, 100 *l.* Oxford paid before, to the king, for all customs and payments, 20 *l.* per annum and six sextaries of honey; to Earl Algar 10 *l.* per annum: but, after the Conquest, it paid sixty pounds. Wallingford, in King Edward's time, was valued at 30 *l.* but, at the time of the Survey, it paid 60 *l.* besides the farm rents of 80 *l.* And the like was the case of Stamford, Nottingham, Ipswich, Norwich, &c. Several of the liberties they enjoyed in the Saxon times were abridged;

[y] Hody, Convoc. p. 185.

and they were subject to that ignominious law of *couvre feu*; and lost in all appearance their *jus communæ*.

For though, indeed, William the Conqueror gave a short charter to London, by the intercession of its Bishop, by which he declared, that they should be law worthy, as they were in King Edward's days, and their children should inherit their father's goods, and should be protected from violence, yet it is evident, that they were not upon such a foot of liberty as they were before the Conquest. But, by degrees, the succeeding kings, standing in need of the assistance of the cities and burghs, did by charter grant them divers privileges. Henry I, Henry II, Richard I, and John, did so to London and several other cities and burghs. But still there is no appearance that any of them were called to parliament, by representatives of their own choice, till the time of King John. Before that reign, the parliaments seem to have consisted only of the Bishops and the greater and lesser lay tenants in capite. For that the lesser of these tenants were summoned, and had a right to be there, as well as the greater, may be fully shewn by many instances. 1st, The Saxon Chronicle, p. 190, informs us, that William the Conqueror used to keep his Christmas at Glocester, and that at those times, "*præsto apud eum fuerunt omnes optimates per totam Anglorum terram; archiepisc. et dioeces. episcopi. abbates et comites, thani et equites.*"

2^{dly}, EADMER, p. 39, speaking of the great council held at Rockingham, in the reign of William Rufus, about the debate between the king and Archbishop Anselm, says, that in the *Placitum apud Rockingham*, there was "*totius regni adunatio.*" And that "*miles unus de multitudine prodiens viro assitit flexis coram eo genibus, dicens: domine pater, rogant te per me supplices filii tui ne turbetur cor tuum, &c. Quæ verba dum pater comi vultu accepisset, intellexit animum populi in suâ secum sententiâ esse.*"

3^{dly}, IN 1101, Robert duke of Normandy, being about to invade the kingdom, King Henry I, to engage his people more faithfully to his interest, promised them to govern with just and holy laws: "*sed ubi ad sponsonem fidei regis ventum est, totius regni nobilitas, cum populi numerositate, Anselmum, inter se et regem, medium fecerunt, quantus ei vice sui, manu in manum porrectâ, promitteret justis et*

“sanctis legibus se totum regnum, quoad viveret, in cunctis administra-
“turum [z].”

4^{thly}, At the great council at Northampton, under Henry II, against Archbishop Becket; the bishops and earls, and greater barons, are described to have gone unto the king to judge Becket. The bishops desired to be excused from judging him. “Nec minus, says Fitz-Stephens, “a comitibus et baronibus exigit Rex de archiepiscopo
“judicium. Evocantur quidam ex vice-comitibus et secundæ digni-
“tatis barones, ut addantur eis et essent iudicio.” This clause shews that the vice-comites, as well as the barones minores, were present at the council, though they had no part in judgment.

5^{thly}, Hoveden, fol. 445, mentions some regulations made in Richard the First's time, about the forests, “per assensum et consilium archie-
“piscoporum, episcoporum, abbatum, comitum, et baronum, et mili-
“tum totius regni [a].”

THE first step that I can find to have been made towards admitting the representatives of the cities and burghs to parliament, was the legate's sending for the Londoners to the council of Winchester, in the reign of King Stephen, A. D. 1142. They were then looked upon as of such considerable weight, that it was thought of moment to soothe and gain them. In King John's time, the citizens of London, having sided with the barons, and admitted them into the city, their interests were farther taken care of in the great charter, granted by that prince, A. D. 1215, in the 17th year of his reign. That charter, after saying that no scutage or aid should be taken in the kingdom, but by the consent of the common council thereof, except in three cases, and then only a reasonable aid, goes on thus, “Simili modo fiat de auxiliis de
“civitate Londonensi: et civitas Londonensis habeat omnes antiquas
“libertates et liberas consuetudines suas tam per terras quam per aquas.
“Præterea volumus et concedimus quod omnes aliæ civitates, et burgi,
“et villæ, et barones de quinque portubus, et omnes portus, habeant
“omnes libertates et omnes liberas consuetudines suas:” then imme-

[z] Eadmer, p. 59.

[a] Hody, Convoc. p. 261.

diately follows, “et ad habendum commune concilium regni de auxiliis assidendis (aliter quam in tribus casibus prædictis) et de scutagiis assidendis summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones regni sigillatim per literas nostras. Et præterea faciemus summoneri in generali, per vice-comites et ballivos nostros, omnes illos qui in capite de nobis tenent ad certum diem, se ad terminum 40 dierum ad minus, et ad certum locum et tempus, in omnibus literis illius summonitionis causam summonitionis illius exponemus. Et sic factâ summonitione negotium ad diem assignatum procedat, secundum consilium eorum qui præsentés fuerint, quamvis non omnes summoniti venerint [b].”

SOME authors have thought, that by the clause “et ad habendum commune concilium, &c.” immediately following the grant or confirmation of these liberties to all the cities, burghs, &c. that clause must imply a grant of a liberty for them to come to parliament. But that cannot well be, because then this grant must be made to all, not only cities and burghs, but all villes and ports, which cannot be supposed. I think it, therefore, most probable that it was some time afterwards before the representatives of cities and towns were summoned to parliament. In the great council held by Henry III at Westminster, it is plain enough, there were only the higher and lower clergy, and those of the laity who held of the king in capite [c]. But yet before, in the 15th year of King John, A. D. 1213, a parliament was held at Oxford, to which were summoned four discreet knights for every shire, together with all the knights within the king’s bailliges [d]. A. D. 1236, a parliament was summoned to meet at Westminster, to grant the king a subsidy; and the persons by whom it was granted, were “archiepif. epif. abb. prior. com. et barones, milites, et liberi homines, pro se et suis villanis nobis concesserunt in auxilium 30^m partem [e].”

To the parliament of Henry III, A. D. 1254, were summoned two knights of every county, to be chosen by it. And the king tells the

[b] Spelm. in Leg. Johan. p. 369. edit. Wilk. [c] Spelm. Cod. Vett. Leg. Henry III, p. 384. Wilkins.

[d] See the writ of summons, Hody, p. 279. [e] Hody, p. 318.

sheriffs at Bedford and Buckinghamshire, that the earls and barons, “et cæteri magnates regni,” had promised to be at London three weeks after Easter, with horse and arms, in order to sail into Gascony. Then he requires all those within his jurisdiction, “qui tenent 20 libratae in capite,” to do the same. Afterwards he commands “quod præter omnes prædictos venire facias coram concilio nostro apud Westm. in quindenâ paschæ, prox. fut. quatuor legales et discretos milites de comitatibus (two for each) quos iidem comitatus ad hoc elegerint, vice omnium et singulorum eorundem, ad providendum una cum militibus aliorum comitatum quos ad eundem diem vocari fecimus, quale auxilium nobis tantâ necessitate inimpendere voluerunt [f].” Brady, in his introduction, says this was not a summons of these knights to parliament; but I think his reasons are not of much weight.

In the same year, 38 Henry III, the regents in England sent to “archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, militibus, civibus, burgenfibus, et omnibus aliis fidelibus suis,” of Ireland, to have a supply granted [g]. And Petit argues from hence, that if the cives et burgenfes were then a part of the Irish parliament, they must certainly have been so before of the English, whose form of government was copied by Ireland. To this Brady answers, that the first writ sent into Ireland, on, this occasion, made no mention of cives et burgenfes; which is true. But this does not destroy the force of the argument drawn from the second, which does mention them.

In 1264, 49 Henry III, was held that famous parliament at London, in the Octaves of Hilary, to which Dr. Brady consents that two knights for each county, and two citizens and burgesfes for each city and burgh, were summoned. But Bishop Atterbury [h] says, that if such a change in the constitution, as summoning knights, citizens, and burgesfes to parliament, had happened all at once, some of our historians would certainly have taken notice of it; which they do not. He thinks the alteration was made by degrees: knights and others had been several times called up from counties, to give account of grievances, &c. and sometimes on account of grants and subsidies.

[f] Hody, p. 341.
Conyoc. p. 337.

[g] This writ is in Brady's Introduction, p. 90.

[h] Rights of

IN 34 Edward I [i], it is said, that the prelates, earls, barons, and others, as also the knights of the shires, being met, they unanimously gave the king the thirtieth part of their goods. The others here mentioned must have been the tenants in capite. It is probable, that they for some time came to parliament, upon a general summons, pursuant to Magna Charta; afterwards they finding their attendance a burden, and being capable of voting for and being chosen, knights of the shire, they, at length, quite discontinued their attendance: which the great barons liked well enough they should, that the distinction might be the greater.

IN the reign of Edward I, there were considerable variations in the summons of knights of the shires. In the 18th year of this reign, two or three of the most discreet knights were chosen for each county. This was after he had scutage granted by some members of this same parliament, before these knights came; and also before the stat. of Westm. 3d. was made. In 22 Edward I, he summoned two knights; and the day following he issued another writ, for summoning two knights more. Brady observes, Introduction, p. 151, that the variations in the number of knights in this king's reign, seems to shew that the constitution of parliament was not yet fully fixed: which, indeed, I think very probable.

UPON the whole, I think it most probable, that, after the Norman Conquest, when the feudal scheme prevailed more than it had done before, the parliaments were composed, not only of the great barons, but of all those who held of the king in capite. It is plain, from many passages above cited, that the tenants in capite were there, and gave other aids as well as escuage. And these tenants in capite must, some time after the Conquest, be very numerous, as those assemblies are represented to have been. Moreover, it is also very probable, that those cities and burghs, which held of the king in capite, sent representatives, which agrees with the argument from the case of St. Albans: at least they might, if they would. By its being made an article in the great charter, that the great barons should be summoned by a special writ to each, and the lesser barons by a general summons, by the sheriff, it seems to have been reckoned a privilege to be summoned. It should

[i] Tyrr. B. P. p. 346, 347.

seem likewise that Montfort, by summoning some, both knights, citizens, and burgeses, who were not tenants in capite, might do it with a view to have some persons less attached to the crown than they.

HOWEVER, this in general is certain, that even from the Conquest, till the time that the commons were regularly summoned to parliament, there were always lower kind of men, as well as the greater barons, members of parliament. And before the Conquest, during the Saxon constitution, the commons had always a share in the legislative authority.

TRACT

TRACT V.

Of the royal Prerogative, and the hereditary Right to the Crown of Britain.

SECTION I.

Of the royal Prerogative with regard to the Making, and Providing for the Execution, of the Laws.

IT is not my design to set forth an account of all the particulars of the royal prerogative: without mentioning those which give the crown an advantage over the subjects, as to the forms of legal proceedings, for securing its debts, &c. I shall only take notice of such as are of chief moment towards supporting the dignity of the crown, and preventing any incroachments from being made upon it by the people. And herein I shall begin with that part of the royal prerogative, which regards the parliament, and is designed to keep it in a due subordination.

AND, in opposition to Mr. Sidney, I must take the liberty to affirm, that, by our national constitution, the crown hath still, as it ever had, the sole right of summoning parliaments; and, after they are met, of continuing, adjourning, proroguing, or dissolving them. It is wonderful that a gentleman of Mr. Sidney's reading should ever have thought of maintaining the contrary.

THOUGH the king is obliged to call a new parliament every seven years, yet he may suffer it to sit as little time every year as he thinks fit, and may then prorogue or dissolve it, in case the members of which it is composed should be generally of a republican or factious spirit. By dissolving it in such a case, there is a chance that the nation will chuse another of a better disposition: or at least the crown will be secure that attempts against its legal prerogative will not be carried on under the name and authority of a parliament. In parting with this right to dis-

I solve

olve the parliament of 1641, Charles I made the greatest step towards his own ruin: For if, after he had made those concessions he did, in favour of liberty, and the parliament continued to push him farther, he had dissolved them and called another, it is probable he would have had one less disaffected; or, if he had called none at all, the republican party would have had a much worse chance for success. On the other hand, if the crown likes the temper of a parliament, it may continue it in being for seven years together, and thereby avoid encountering with those discontents, which are sometimes unduly raised amongst the people, and may have a bad influence upon the elections of members of parliament. The crown may, within the compass of seven years, stay and chuse its time for a new parliament, when these dissensions are allayed or subsided.

BUT the most important part of the prerogative, with regard to the parliament, is, that the crown hath a negative against passing any bills into acts; and can thereby prevent any thing from becoming a law to the dishonour or disadvantage of itself. And for the exercise of this negative, the king is not obliged to give any reasons: it is sufficient that he judges the matter unfit to be enacted. Some of our writers, indeed, have presumed to affirm, and others to insinuate very strongly, that the crown is obliged to pass all bills that are presented to it by parliament. They quote a part of the oath taken formerly by our kings, at their coronation, as implying thus much, (*viz.*) “concedere justas leges quas vulgus elegerit.” And they infer the thing from a clause in the statute of provisors, 25 Edward III. sect. 6, which is in these terms: “The said commons have prayed our lord the king, that, sith the right
“of the crown of England, and the law of the realm, is such, that,
“upon the mischiefs and damages which happen to his realm, he ought
“and is bound by his oath, with the accord of his people, in parliament,
“thereof to make remedy and law, and in removing the mischiefs and
“dangers which thereof may ensue, that it may please him thereupon
“to ordain remedy.” Upon which clause Bacon, in his discourse on the government of England, comments thus: “The rule of a king is
“law and council: unto these, in all prudential matters, he must submit his judgment and will, as he is a king.” And *ibid.* part ii. p. 176,
he

he says that, "how a double negative should vest in the house of lords, "one originally in themselves, the other in the sole person of the king " (when as in no case is any negative found upon record, but a modest waving the answer of such things as the king likes not) is to me "a mystery, if it be not cleared by usurpation." And even the house of commons, in the reign of William III, though they did not, indeed, go so far as to deny expressly that the crown was at liberty to give its negative to any bills passed by both houses of parliament; yet, in their representation made to that prince, they tell his majesty, that what bills had been agreed to by both houses, for the redress of grievances, or other public good, had, when tendered to the throne, obtained the royal assent; and that there were very few instances, in former reigns, where such assent, in such cases, had not been given, and these attended with great inconveniencies to the crown of England. But, as the house of lords did not join in making this representation, many persons, who well understood our constitution, thought that the house of commons pressed rather too hard upon the crown, in this matter. For Queen Elizabeth, at one time, Feb. 9, 1597, refused her assent to above forty bills, which had passed both houses of parliament [k]. And she also, in plain and full terms, asserted her right so to do, saying to Sir Edward Coke, speaker of the house of commons, "It is in my power to "assent or dissent to any thing done in parliament [l]."

AND in Henry the Fifth's time, Rot. Parl. 2 Henry V. N^o. 221, when the house of commons challenged it as their freedom, that they should not be bound to any law without their assent, the king allowed it; but, at the same time, affirmed, that he was also at liberty to grant or deny what he pleased of their askings [m]. Indeed, many of the ancient laws being penned in the way of grant, or ordinance, from the crown, in answer to the petitions of the commons, hath led some persons to imagine that antiently our kings made laws, by their own authority, without assent of parliament. By the preamble to the constitutions at Grately, in King Athelstan's time, it appears as if the legislature, in civil matters, lay wholly in the king: and as if the bishops and other great men

[k] Townshend's Collect. p. 127. [l] Prynne's Plea for the Lords, p. 411 [m] Tyrr. B. Pol. p. 419.

were convened only for their advice, and not to give any force or authority to the law [n].

THIS notion was a mistaken one : for there are proofs sufficient, that, by the original constitution, the great council or parliament had a negative on the crown, in all matters ; or rather nothing could have the force of law without the assent of the great council, unless, perhaps, for one age after the Norman Conquest. But then it is equally clear, and indeed more so, that the crown had, at the same time, a right to deny its assent to any proposals made by the parliament, and that, without such assent, no laws could be of force. For in the end of the statute of Merton [o], it is mentioned that “ *magnates petierunt propriam prisonam de illis, quos caperent in parcis, et vivariis suis. Quod quidem dominus rex contradixit, et ideo differtur.* ”

THOUGH the king was obliged to use this power justly, and for the public good, yet what was thus just and good he alone was to judge for himself ; which indeed the house of commons, in King James the First's time, made no difficulty of acknowledging. They say, in the apology designed to be presented to that prince, that they knew their passing a bill could not bind his majesty [p]. And whoever considers things rightly will allow, that this part of our constitution is founded on reason and expediency, as well as in prescription. For, in a mixed government, if the supreme power had not such a negative, with regard to bills offered to be passed into laws, it would soon be reduced very low, and all authority would fall, by degrees, into the hands of the people or their representatives. This was actually the case at Rome, where, though, for some time after the expulsion of the kings, the senate had, in effect, this power of a negative, because no laws could be proposed to the people without their authority, yet, some time after, the privilege of proposing laws to the people was usurped by their tribunes : and, after this came once to be the case, there being nothing to check the impetuosity of the people, it soon carried all before it, and bore down almost all the privileges of the senate as a distinct order, which was one great cause of the ruin of that people.

[n] Collier's Eccles. Hist. vol. i. p. 176.
Parliam. p. 232.

[o] Coke's 2d Inst. p. 109.

[p] Hale of

It was, therefore, a fit circumstance, in most of our Gothic constitutions, that as the crown was not allowed to make laws by its own authority, so it had a negative given to it upon any proposals made on the part of the people: and that, in order to make a sort of farther defence to it, another negative was also vested in the house of lords. If any person considers how apt the people are, like a great body of water, to be put in motion, and then to press very strongly upon, and almost bear down, every thing in its way, he will see the fitness of having such an authority to restrain and keep them in due bounds.

PERHAPS it may be thought, it is not at all presumable, that the house of commons should ever be disposed to offer any bills that are against the national interest, or unfit for the crown to pass: and I believe, indeed, that this cannot happen frequently: but that such a case is not impossible, we may learn from the experience, both of other nations and of our own. The people of Athens, in the application of public money, in the decreeing the Syracusan and Peloponnesian wars; the Roman people, in voting the Agrarian laws, in continuing the commands of provinces to Pompey and Cæsar, and in several other instances, were wrought upon to act against the public interest. And, in our own nation, in the time of Charles I, the house of commons grew so fond of extending their own privileges, that they actually overbore both the house of peers, and ruined the whole constitution. As a guard against any such excesses for the future, a negative, both in the crown and in the house of lords, is very expedient; and, if it be exercised generally in a proper manner, it will be approved, I believe, even by those of the commoners who are true friends to our constitution.

As to the execution of the laws, the crown has likewise such powers as are sufficient, both for its own safety, and for the protection of its subjects. There is indeed in the cities, and most other corporate towns, civil authority, in some measure, independant on the crown; because, by virtue of charters granted them by former princes, they are authorized to chuse their own civil magistrates from among themselves. These magistrates, for maintaining the peace, suppressing disorders, and giving course to justice, can, in most cases, act without any new warrant from the crown; and can, in some cases, even put subjects to death

without its assent [q]. But this authority seldom reaches any farther than their own precincts: and their exercise of it is cognizable by the judges of the superior courts at Westminster, who, though they be for life, as has been before observed, yet are, at first, appointed by the king, and may therefore be reasonably supposed willing to take care that the royal prerogative be not impaired.

THE other part of the people, who do not dwell in corporate towns, is more immediately subject to the jurisdiction of the justices of the peace. These officers succeeded to the antient conservators of the peace, and were antiently elected by the people; and there have been several parliamentary applications that the justices might still be so chosen: but this would have been inconvenient; and the crown has very fitly reserved the power of appointing them, with commissions during pleasure.

THE writs, and other forms necessary to the course of civil justice, are executed by the sheriff, who is an officer also appointed by the great officers of the crown. Formerly he was chosen by the freeholders, but this was found inconvenient, and so the appointment of him was vested in the great officers of state. He has the command of all the power of the county, or of all the civil force that can be raised therein, except in the several jurisdictions of the towns corporate: and in them no force can be used but in execution of legal processes, or for resistance of any sudden invasion. In any other case, no great company of persons can appear in arms, or in any forcible manner, without a commission from the crown. It is manifest rebellion (say the judges in the earl of Essex's case, in Queen Elizabeth's reign) to force the king to govern otherwise than according to his own royal direction; and for the subject to put himself into such a strength, that the king shall not be able to resist him: nay subjects, by power, ought not to take upon them to remove evil counsellors, pretending reformation, &c. this being levying war against the king; because they take upon them royal authority, which is against the king.

If any do gather together, in a way to be reasonably suspected of ill intentions, to the number of more than twelve persons, the sheriff, or

[q] See the charters of the Cinque Ports..

any other of the king's justices of the peace, may read a proclamation to them, as appointed by an act of parliament, made in 1 George I; and, in the king's name, may command them to disperse; after which, if they continue assembled for above one hour, they are, by so doing, guilty of felony. The subjects cannot assemble, even so much as under pretence of petitioning the king, in any great or dangerous numbers: for by 13 Car. II. cap. 5, to present a petition to the king, or either house of parliament, attended by above ten persons, is punishable.

No subject can build any castle, or other fortress defensible, without leave of the king [r]. Nor can any subject, except in cases of sudden invasion, or other danger, garrison or hold any such place of strength, or array, or bring into the field any power of armed men, without the king's commission authorizing him so to do. Nor can any subject equip or arm any ship of war, so as to act with it against any person, either a foreigner, or his fellow subject, without the like commission. For by 13 Car. II, cap. 6, the king is declared to have the supreme government and disposal of the whole militia of the kingdom, by sea as well as by land; and that no person else, nor either house of parliament, nor the two houses jointly, can lawfully pretend to dispose of any part of the same.

MR. Moyle, in his treatise of the Roman government, seems to reflect upon this as a change in our constitution from what it was formerly, and a change for the worse. "The wisdom of other nations, he says, limited the regal power, by placing the sword in the hands of the subject, which was the best security of all, and was the antient constitution of England, while the power of the militia belonged to the nobility and gentry, almost independant of the crown [s]." And it must be acknowledged that, in some other nations of Europe, the great subjects did, at some times, act as if their laws gave them the authority of the sword, to prosecute their own quarrels with one another, independantly of their kings. Alteserra, and Count Boulain. vol. iii. p. 400, acquaint us, that it was so in France. Nay it was to such a degree, that the

[r] Coke's 2d Inst. p. 30. Rot. Parl. 45 Edward III, and 6 Henry IV. 59. Roman Government, p. 105.

[s] Moyle on the

tenants of great lords were obliged to serve them in war, even against the king himself, if he denied them justice. But the natural consequences of this practice were continual civil wars and ravages, unjust oppressions, violencies and cruelties, in that kingdom, as long as that liberty lasted.

IN England, under some reigns, when the imprudent conduct of our princes made the crown weak, several of the great subjects took the like liberty. In the statute of Malbridge, 52 Henry III, A. D. 1267, it is said, that “*tempore turbationis nuper in regno Angliæ subortæ,*” “*et deinceps, multi magnates et alii justiciam indignati fuerint recipere*” “*per dominum regem, et curiam suam, prout debuerunt, et consue-*” “*verunt temporibus prædecessorum ipsius domini regis, et etiam tem-*” “*pore suo: sed de vicinis suis, et aliis, per seipso graves ultiones fecerint,*” “*et districtiones, quo usque redemptiones reciperent ad voluntatem*” “*suam, &c.*” And in the time of King Stephen, and after, while there were many castles in England, the lords of them used to act with great oppression and violence: they used to seize provisions all about them [t]. And when a number of the barons thought fit, they used to make insurrections against the crown; for which they had then great advantages, because their under-tenants were, in a great measure, subject to them, as Boulainvilliers tells us those in France were to their lords. But it does not appear, that it was ever legal, in England, for any subject to take arms against the king, or even without his permission or commission. On the contrary, it is true, as by 13 Car. II. cap. 6, it is asserted, that the supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength, is, and, by the laws of England, ever was, the undoubted right of his majesty.

BRACTON, who lived about the time of Henry III, saith, “*in rege*” “*qui recte regit necessaria sunt duo hæc, arma videlicet et leges, &c.*” Accordingly he says in another place, lib. i. cap. 8. “*sunt et alii poten-*” “*tes sub rege, qui dicuntur barones, hoc est, robur belli: sunt et alii;*” “*qui dicuntur vavasores, viri magnæ dignitatis: sunt et sub rege mili-*

[t] See Stat. West chap. 7, in Lord Coke's 2d Inst.

“tes, ad militiam exercendam electi.” And Fleta, lib. i. cap. 17, says, “habet rex in manu sua omnia jura quæ ad coronam et laicalem pertinent potestatem, et materiale gladium qui pertinet ad regni gubernaculum.” And the same appears from a statute in the reign of Edward I, A. D. 1279; it belongeth to us (saith that prince) and from us, by our royal signiory, to forbid force of arms, and all other force against our peace, at all times that we shall please; and to punish, according to the laws and usages of the realm, all such as shall oppose: and to this, the lords and commons are bound us to aid, as their good lord, always when need shall be.

AND this was but agreeable to what was practised before, by Henry III, who, while he was under the power of the earl of Leicester, issued out a proclamation for raising the militia of the kingdom, to resist an invasion. He issued other writs for securing the sea coasts; others, that the persons he had summoned should appear with horse and arms, at London, at such a time, upon pain of losing their lands and tenements; others, again, that the sheriff should detain and imprison all defaulters, and levy money in the counties for the maintenance of the troops. I have, says Tyrrel, Henry III, p. 1033, been the more exact in setting down the substance of these writs, because they prove the king's power over the militia in those times: the king being then directed by Leicester, a popular man, who would hardly have exceeded the bounds of the prerogative [u].

JUDGE Coke says, that, in time of danger, the king hath a power to command all or any persons in his kingdom to attend, with arms, at the sea coasts, or any other parts of the kingdom: and also, by his officers, to make stay and arrest all or any of the ships of the merchants, or others having ships, or as many as he pleaseth, to go with his navy to any parts of his kingdom, for the defence thereof, &c. [w]. Writs of this sort were sent, in 26 Edward III, to Yarmouth and other ports, to provide ships and mariners; and orders were, at the same time, sent to the earl of Huntington and others, to array men and guard the coasts of Kent.

[u] There were many more writs of this sort issued out in Edward the First's time: see Append. to 3d vol. of Rushw. Coll. p. 200. [w] Rushw. vol. ii. p. 196. Append.

HENRY II, in A. D. 1181, says Hoveden, assessed upon every knights fee, and every freeman of sixteen marks yearly, their certain arms; and the like upon every burghs and freeman of inferior value: and ordained that these arms should be kept and maintained, from time to time, in the king's service, and at his command. Thus in like manner, Will. Conq. "Statuimus etiam, ut omnes liberi homines fide et sacramento
 "affirment quod intra et extra universum regnum, Wilhelmo regi domino
 "suo fideles esse volunt, terras et honores suos omni fidelitate ubique servare
 "cum eo, et contra inimicos et alienigenas defendere. Statuimus etiam et
 "similiter præcipimus, ut omnes civitates, et burgi, et castella, hundreda,
 "et wapentachia totius regni nostri prædicti singulis noctibus vigilantur, et
 "custodiantur in gyrum pro maleficis et inimicis, prout vice-comites, et
 "aldermanni, et præpositi, et ballivi, et ministri nostri, melius per com-
 "mune concilium ad utilitatem regni providebunt. Statuimus et fir-
 "miter præcipimus, ut omnes comites, et barones, et milites et servi-
 "entes, et universi liberi homines totius regni prædicti, habeant et tene-
 "ant se semper bene in armis, et in equis, ut decet et oportet, et quod
 "sunt semper prompti et parati ad servitium suum integrum nobis
 "explendum, et peragendum, cum semper opus adfuerit. Statuimus
 "etiam et firmiter præcipimus, ut omnes liberi homines totius regni præ-
 "dicti sint fratres conjurati ad monarchiam nostram, et ad regnum nostrum
 "pro viribus suis et facultatibus contra inimicos pro posse suo defenden-
 "dum, et viriliter servandum, et pacem et dignitatem nostram, et co-
 "ronæ nostræ, integram observandam." And even the Saxon laws
 speak, very often, of preserving the king's peace; and of persons who
 had lands or chattels, and were obliged to furnish so many men, or so
 much money, "ad regis egressum [x]." Thus "ego Æthelstanus rex de-
 "claro, quod pax nostra pejus observetur, quam, mihi placet, vel quam
 "Greatanleæ dictum erat: et sapientes mei dicunt, quod hoc nimis diu
 "pertulerim [y]."

FROM cap. 35. of the laws of Edward the Confessor, Tit. de Here-
 tochiis, it appears, that those officers, who had some command over the
 military forces, under the king, were indeed chosen, one for each county,
 in the full folkemote, by the freeholders; but then they were chosen

[x] See *Judicia Lond.* apud Wilk. Legg. p. 71.

[y] Ibid. Wilk. p. 62.

“ ad conducendum exercitum comitatus sui, juxta præceptum domini
 “ regis, ad honorem et utilitatem coronæ regni prædicti, semper cum
 “ opus adfuerit in regno.” Sir Henry Spelman says, that William the
 Conqueror first sunk this office of the heretocks into that of the earls.

THE king can raise what number of men he thinks fit in any case of
 danger : he cannot indeed keep them up for any time, without consent of
 parliament ; and in this respect the prerogative is duly tempered. But
 this right, which he has, of levying forces, and which no subject has,
 are things certainly very expedient for the public safety. King Charles I
 had reason to contend that the disposal of the militia was his right : and
 the parliament, of 13 Car. II, did well to restore it to the crown ; not
 only as it was an antient, but an expedient part of the prerogative ; and
 so it continues to be at present : so that the crown is competently guarded
 against intestine commotions.

S E C T. II.

Of the royal Prerogative and Dignity in other respects.

THE power of making war and peace, with regard to foreigners,
 is vested wholly in the crown : for though it may be very true,
 that our kings have often consulted their parliaments, upon such occa-
 sions, yet this has been only from the consideration of the supplies re-
 quisite to carry on the war ; and not that the right of determining either
 war or peace is not wholly in the crown, as Dr. Davenant, in his Essay
 on war and peace, has endeavoured to prove : for that the crown has this
 right entirely in itself, our best lawyers and antiquarians have allowed.

SMITH, de Rep. Angl. lib. ii. cap. 4. saith, “ Rex, reginave, summam
 “ pacis bellicue denunciandi potestatem habet. Bellum indicit : pacem
 “ aut inducias rursus paciscitur vel suo vel concilii sanctoris arbitratu.”
 Sir Walter Raleigh, Maxims of State, p. 3, says, “ that monarchies
 “ are of two sorts, touching their power and authority. First, entire,
 “ where the whole power of ordaining all state matters, both in peace
 “ and war, doth, by law and custom, appertain to the prince ; as in

“the English kingdom, where the prince hath power to make war, leagues, and peace.” Lord Chief Justice Coke, in Calvin’s case, saith, that the king only hath power to make war and peace. The king may conclude upon war or peace, without calling his great council; and all the subjects of England cannot do it without the king [z].

IN 4 Edward III, the commons petitioned, that the king would enter into certain covenants and capitulations with the duke of Brabant; in which petition also there was somewhat asserted about money matters. The king’s answer was, that, what concerned the monies, they might handle it and examine it; but, touching the capitulations and peace, he would do as he thought good. And even the house of commons, in James the First’s time, say, that to the royal authority, and to that only, it does belong to resolve on peace and war [a].

THE majesty and dignity of the crown at home is not less provided for: it has the greatest respect and reverence paid to it. The king is served upon the knee, and the law has made it honourable for the greatest lords to serve him and his family: every one is obliged to stand uncovered in his presence, and even in that of his chair of state [b]. The law considers his person as sacred and inviolable, so that only to imagine or intend his death is high treason, when this intention appears by any overt act, though, in other cases, “*voluntas non reputabitur pro facto*.” The law considers the king as incapable of doing any wrong, of any infamy, lachesse, negligence, or folly [c]. If there be any instances of maladministration, the fault remains wholly upon his ministers; who may indeed be called to an account, by parliamentary or other legal proceedings. But the character and person of the king himself, in the eye of the law, remain wholly uncharged; and, while that has its course, no forcible resistance can be practised against him or his authority.

THOUGH most of the antient crown manors are now alienated, yet still the king has a revenue sufficient to maintain the splendor of his court. Our antient kings, says Fortescue, in his Difference between absolute and limited monarchy, were possessed of a fifth part of all the lands in the kingdom, except those that were in the church. And the author of the Royal

[z] Rushw. vol. ii. p. 552.
Angl. lib. ii. cap. 4.

[a] Daven. Essay on Peace and War, p. 204.

[c] Finch del Ley; apud Sheringham Royal supreme, p. 34.

[b] Smith, de Rep.

treasury computes, that the improved value of the lands that were formerly in the crown, would be worth above a million sterling per annum; though, in Henry the Sixth's time, it was represented to the commons, that the revenue of the crown was but 5000 *l.* per annum, and the expences of the household itself amounted to above 24,000 *l.* per annum. But there is now a fixed revenue settled on the king, by parliament, for life, of 800,000 *l.* per annum, issuing out of the customs, excises, and other funds, that will rather afford a surplus, than fall short of that sum: which if it should ever do, yet it is to be made good to the king by parliament.

AND, in order to his rewarding his well-deserving subjects, the law has made him the fountain of honour, not only of the lesser degrees, but of the peerage itself; which, without any controul, he may bestow on whatever persons he thinks fit. Some authors have insinuated, that this part of the prerogative, as it hath been of late exercised, hath been a kind of usurpation; for that antiently, and by right, the crown ought not to make any peers, without the consent of the other peers [d]; but this is certainly a mistake.

INSTEAD of the antient means of rewarding its dependants, by the grant of wardships, marriages of heiresses, and the like, which were, as hath been already observed, very burthensome and oppressive to the nobility and gentry of England, the crown has, at present, great numbers of honourable and profitable places and preferments in its gift; not only those that were formerly in the crown, but many more, arising from the funds, and the increase of property in the kingdom, since the Revolution. In a word, by itself, or by those whom it appoints, the crown has the grant of all places of trust and profit, as well ecclesiastical as civil and military.

IN the conferring of bishoprics, the crown is no longer embarrassed, as it formerly was, and as several of the popish princes now are, with the intervention of the pope; who must grant his bulls, without which a bishop cannot be consecrated, and will therefore have some interest in

[d] Thus West, St. Amand, and others.

the new bishop, as well as his sovereign. Nor is the crown under any check from the choice of its subjects interfering with its own. Its sole *cong  d'elire* is effectual. For though its letters patents of leave to the dean and chapter of the vacant see are only, in general, a warrant to them to chuse a person devoted to God, and useful and faithful to his majesty and his kingdom, yet, by his letter missive thereto joined, he names and recommends some particular person, to be chosen bishop of that see: and the chapter is not at liberty to refuse the person nominated, or to chuse another, without incurring the penalties of the statute of *pr munire*; nor will this refusal, if they are even willing to submit to those penalties, have any effect. For the person so nominated must be consecrated by the archbishop or bishops, commissioned to do it, under the same penalty: so that it is properly in the power of the king only to make any person be chosen a bishop, and to vest him with his temporalities, and particularly with his peerage, and a right to sit and vote in the legislature, as a member of the house of peers; by which means the crown may have an opportunity to form a considerable interest in that house: and the king only can translate bishops from one see to another. And, as the bishops have a great authority over the clergy, the king may by their means influence these latter.

NOR has he this influence only from creation of bishops, but from that also of temporal peers, whom he may make at any time, and in such number as he thinks proper: for this power our constitution has entrusted to the king's sole discretion. There have indeed been some murmurs, of late years, with regard to the exercise of this power; and some persons, as I have already observed, have insinuated, or almost affirmed, that the crown has not long had it in the manner it has at present. For that antiently the peers were all made in parliament, and with the consent of that body; and, according to the original constitution, they ought to be so [e]. But these notions have no other ground than certain imaginations about the antient nature of the feudal constitutions in general, and ours in particular: which notions are false.

[e] Thus says the author of the Enquiry into the manner of creating peers. The author of the *Lex Parliam.* p. 24. St. Amand, in his *Essay on the Legislature*, p. 163. 171. and Tindal, in his notes on *Rapin's Hist.* vol. i. p. 157.

ST. Amand says, that, by the feudal law, to which, our law being built upon it, we ought, in dubious cases, to resort, no peer could be made without the consent of the other peers; for which he quotes Hottoman's *Franco-Gallia*, where the passage, indeed, in the English translation, does say so much. But in the original it is, "*quemadmodum pares curtis five curiæ feudali jure neque creari, nisi pro collegio,*" i. e. in presence of the college; for thus Livy, "*laudati pro concione omnes sunt [f],*" not with their consent. Thus a copy-holder must be admitted in court, or in the presence of other copy-holders, though their consent be not requisite thereto. And, in fact, it is plain that, in France and Germany, from which countries we copyed, with regard to our dukes and earls, these honours were conferred by the sole appointment of their kings and emperors. Thus Greg. Tur. lib. vi. cap. 26. "*Igitur pervasis Chilpericus civitatibus Francis suis, novos comites ordinat.*" And Fortunatus, lib. x. cap. 23. "*Ad Galaetorium comitem Burdigalensem (apud Alteserram, p. 13.)*"

"Crevisti tandem quod debebatur, amice;

"Ante comes merito, quam datus esset honos.

"Judicio regis valuisti crescere iudex,

"Famaque quod meruit regia lingua dedit."

Idem ad Ligoaldum Comitem, lib. x. cap. 22.

"Rex Childebertus crescens te crescere cogit,

"Qui modo dat comitis, dat sibi dona ducis."

And the like was done among us in England: our kings certainly made earls, when those dignities were only officary, as they were in the Saxon times. "*Regum est (says one of our Saxon kings) constituere comites et duces [g].*" And there are many instances wherein they made and removed them without any mentioned interposition of the witenagemote. King Alfred gave the earldom of Merchland to Ethelred, who married his daughter Ethelfleda [h]. William of Malmesbury, p. 71, says, that Edmund Ironside, upon marrying the widow of the earl of Northumberland, desired that earldom of his father King Ethelred. And the same

[f] See Cooper's *Dictionary*, in voc. PRO-
Honour, p. 650.

[g] Saxon Chron. p. 49,

[h] Selden's *Titles of*

author, p. 83, says, that “proinde si subditos velit, Marcherium filium
 “Elgari iis præficiat rex. Rex Edw. Confessor in iram promotus, dimif-
 “fâ reginâ, thesaurum suum et terras ei (*i. e.* comiti Godwino) abstulit,
 “deditque Othyrri consultatem Davenescire et Somersete et Dorset. Al-
 “garo vero filio Lefrici dedit comitatum Haroldi [i].”

SPELMAN, in Vit. Gulielm. Conq. p. 286, says, that “comitatum
 “enim nulli, tum (*i. e.* in the Conqueror’s time) jus hæreditarium. Sed
 “præfecti, qui comites dicebantur, officarii erant, et magistratus a rege
 “ad arbitrium dati et semoti, prout illi hodie quos comitatum appella-
 “mus locum tenentes.” The Conqueror, in imitation of what was
 done not long before in France, by Hugh Capet, made the earldoms
 in England, at least to his own followers, hereditary: but still the
 right of conferring them remained wholly in the crown. Henry I,
 created Richard Redvers: “in comitem Devonix tertium denarium annui
 “exitus ejusdem comitatus illi concedendum consequenter creavit [k].”
 The empress Maud created Robert Fitz-roy earl of Gloucester; and
 Milo earl of Hereford. Her patent to the latter, which is thought to
 be the oldest now extant, may be seen in Selden’s Titles of Honour.

BRACON, who lived about Henry the Third’s time, speaking of
 Comites, who are also called Consules, says, “Reges sibi tales associant
 “ad consulendum et regendum populum Dei, ordinantes eos in mag-
 “no honore potestate et nomine.” And even the reciting part of an
 act of parliament acknowledges this power [l]. “Pro eo tamen quod
 “huiusmodi creatio ducum, five comitum, ad solum regem pertinet, et
 “non ad parliamentum.” The commons, in 50 Edward III, requested
 the lords that they would make prince Richard of Bourdeaux, grandson
 of Edward III, prince of Wales. The lords answered, that this laid
 not in them, but in the king only, so to do; to whom they promised to
 be mediators therein [m].

THESE authorities appear sufficient to prove, that this right is not
 only at present settled in the crown, but is so rightfully, according to
 the antient constitution, and to be exercised at the sole discretion of the

[i] Hen. Hunting. lib. vi. p. 366.
 Essay, p. 178.

[m] Cott. Abr. p. 123, 124.

[k] Selden’s Titles of Honour, p. 680.

[l] St. Amand’s

king. These honours, which at first were temporary, are now always conferred for the life of the party, and their right heirs, and often for their heirs in general. And bishoprics, which, in Edward the Sixth's time, were also taken "*durante beneplacito*," are also, very justly, for the life of the parties who have them: and the case is the same with the judges, and others, who hold their places by patents, "*quam diu se bene gesserint*." But most of the great civil offices, and all commissions military, are only "*durante beneplacito regis*:" so that, upon any personal offence, or suspicion of ill conduct, which the king may know, though he cannot make it appear in course of law, he can discharge such unfit persons from his service; and, by his power, he can keep all such persons within the bounds of due respect and constant attachment.

AND the king may not only reward well-deserving subjects, but also pardon those who have committed criminal actions, with such circumstances as should in reason recommend them to mercy. To remit the punishment of those who offend of malicious wickedness, and are likely to do the same for the future, would be against the interests both of the public and of the king himself. But there may be cases of such who offend ignorantly, or inadvertently, or through passion, or who have been cast by prejudiced juries or the utmost rigour of the law. And these it may be not only the interest of the public to pardon, but the king may hereby gain an interest in the hearts of his subjects, by exercising mercy. And therefore our constitution hath settled this high prerogative in the king. Legg. Edwardi, p. 201. N^o. 18. "*Jam si quispiam rei capitalis reus poposcerit regis misericordiam pro forisfacto suo timidus mortis vel membrorum perdendorum, potest ei lege suæ dignitatis condonare, si velit etiam mortem promeritam.*" And the statute 9 Edward IV. chap. 2. says, "*a chascun roy, per raison de son office, il append à faire justice en execution des leges; grace en granter pardons, &c.*" The king can both remit the penalty and pardon the offence, not only in the case of misprisions, trespasses, contempts, and other such offences, but also in the case of felonies, murders, and treasons: and this not only before the party has been indicted or attainted of them, but afterwards.

It is true, that the king's pardon is not pleadable to an impeachment of the house of commons, for treason or any other crime; and that, in the case of murder, there are some statutes, that seem to put some measure of restraint upon this prerogative. In 2 Edward III. chap. 2, it is said, that, whereas offenders have been greatly encouraged, because charters of pardon have been so easily granted in times past, of manslaughter, robberies, felonies, and other trespasses against the peace; it is ordained and enacted, "que tiels chartres ne soient pas grantées, lors-
 " que en cas où le roi le peut faire par son serment; cet assavoir, en cas
 " où home tué autre soi defendant, ou par infortune." And 4 Edward III. chap. 13, it is said, because divers charters of pardon have been granted of felonies, robberies, and manslaughter, "contre la forme de l'estatut,
 " fait à Northampton, contenant que nul home n'aueroit tiels chartres
 " hors du parlement, par ount les meffesours ont este plus esbaudiz de
 " meffaïse, si est accordé que mesme le estatut soit desore garde et meyn-
 " tenu en touz pointz." And again, 14 Edward III. cap. 15. it is as-
 sented, established, and accorded, that no charter of pardon of the death of a man, nor of other felony, shall be henceforth granted to any man, but in case where the king may the same do, saving the oath of his crown, as it is contained in the statutes made before this time. From whence it has been imagined that the king was, by these statutes, disabled to pardon murder, out of parliament.

BUT the contrary appears from 13 Richard II. cap. 1; for the commons having complained, that treasons, and murders, and rapes, were commonly done and committed; and the more because charters of pardon have been easily granted in such cases: the said commons requested our lord the king, that such charters might not be granted: to whom the king answered, that he will save his liberty and regality, as his progenitors have done heretofore. But he grants that no charter of pardon for murder shall be henceforth granted, unless the same murder be specified in the charter. Hence, therefore, this act, by saving the king's regality and liberty, and expressing how the pardon of murder shall be granted, easily implies, that the king may lawfully grant such a pardon, with this condition.

LORD

LORD COKE says [n], that the intention of this act, of 13 Richard II. cap. 1, was not that the king should grant a pardon of murder, by express name in the charter, but because the whole parliament conceived that he would never pardon murder, by special name, for the causes afore said; therefore that provision was made. But this gloss is plainly forced and unnatural; and there was no occasion to dispute this till after the Revolution. The practice indeed has been for succeeding kings, in their grants of pardon, to dispense with this statute of 13 Richard II. In the pardon, granted by King James I, to the countess of Somerset, for murder, there is a clause of non obstante to this statute of Richard II, or to any other statute [o]. But the statute of William and Mary, taking away from the crown all dispensations with acts of parliament, led some lawyers to think that the crown cannot now pardon murder. But it was, with very good reason, adjudged otherwise, in the King's Bench, 3 William and Mary [p]; and the king's pardon was allowed without a clause of dispensation; so that the king can now pardon murders.

In every case of murder, indeed, the next heir may have an appeal, which the king cannot bar; the person charged with it, even though he has been indicted and acquitted of it at the king's suit, yet may be tried again upon the appeal, and if, in that trial, he be found guilty, the king cannot pardon him, because the penal satisfaction, which the subject is to have for the death of his near relation, is supposed to be an interest belonging to the subject; and it is a maxim in our law (Bracton, lib. iii. fol. 132, apud Coke, 3d Inst. p. 236.) that "*non poterit rex gratiam facere cum injuria et damno aliorum. Quod autem alienum est, dare non potest per suam gratiam.*" For this reason likewise the king cannot pardon upon an appeal for robbery, rape, or mayhem. Nor can he pardon a nuisance; nor costs due by a sentence in the ecclesiastical courts.

BUT where the subject is not endamaged, and the penalty incurred would be solely to the benefit of the king, in those cases he can pardon. However, in order that the validity of the pardon may be known, it must be drawn up, and pleaded in due manner; that is, it must have

[n] 3d Inst. p. 236, cap. 105, of pardons.

[o] State Trials, vol. i. p. 350.

[p] 2 Salkeld, p. 499.

an exprefs mention of the crimes committed, and of the proceedings that have been had upon them, viz. inditement, conviction, or the like, that it may not be prefumable that the king was deceived: and the pardon muft be pleaded before the courts of juftice where the culprit is tried. In thefe cafes, the pardon will hold good; and though, without exprefs words for reftitution, it will not reftore the forfeited goods and lands, yet, with fuch words, it will reftore them; and will even reftore a man to his credit and character.

WHEN a man has been attainted by parliament, he cannot be reftored in blood again but by act of parliament; but, by the king's pardon, the iffue which has been born to him after his attainder will be rendered capable of inheriting: fo that, upon the whole, this is a prerogative capable of being exercifed very much to the benefit of the fubject. Moreover, every man in office, and every other man, if required, is to take a folemn oath of allegiance to the king; and not only fo, but likewise an oath of abjuration of the authority of the pope, and of any right in a pretender to the crown of Great Britain.

By thefe great branches of the royal prerogative, and feveral other advantageous ones of leffer moment, that might have been mentioned, the crown is enabled to fupport its majefty and dignity; and will, if any prudent meafures of conduct be obferved, be able to obtain generally both the refpect and affection of its fubjects, and thofe of the two houfes of parliament. And, in fuch a cafe, it will be able, if not to do fo much harm in the world as abfolute princes can do, yet often to do as much or more good than they can.

Now this is the fituation which wife men have thought the happieft for princes to be in. Diodorus Siculus tells us, that “*Ægyptiis regibus*” “(olim) neque judicandi, neque pecuniam congregandi, neque puniendi” “*quemquam per superbiam aut iram, aut aliam injuftam ob caufam*” “*licentiam permiſſam, fed veluti privati tenebantur legibus, neque id*” “*ægre ferebant, exiſtimantes parendo legibus ſe beatos fore* [q].” And that very good patriot, as well as courtier, Sir John Fortefcue, ſays, “that the power of an abfolute prince is attended with much more dif-

[q] Lib. ii. p. 41.

“ficulty in the execution of it, and with less security both to the prince
“and to the people; so that a wise prince would not wish to change
“the political form of government for the absolute [r].”

MONSIEUR de Fenelon, late archbishop of Cambray, though he was himself born under an absolute government, could not forbear expressing his sentiments to the same purpose. He observed, to a person whom he thought to have some concerns with his kingdom, “les avantages qu’il
“pouvoit tirer de la forme de government de son pais, et des égards
“qu’il devoit avoir son senat. Ce tribunal ne peut rien sans vous.
“N’etez vous assez puissant. Vous ne pouvez rien sans lui : n’etez
“vous heureux d’avoir les mains liez quand vous voulez faire le mal, et
“d’avoir un conseil supreme qui modere son autorité [s] ?”

It is our happiness, at present, to have a prince of that disposition which Monsieur de Cambray recommends. He truly desires to be esteemed and loved, as well as submitted to, by his subjects: and hath given proofs sufficient of this disposition, by never having made any wilful breach upon the laws. His known bravery, and true greatness of spirit, do not transport him into any fallies or excesses hurtful to his people: in which, as he has copied after his royal ancestors, so has he the pleasure to see the same noble, benevolent spirit in all his family. And the Divine Providence, having made this family so flourishing in the number, as well as in the amiable qualities of those who compose it, seems to have made so far a provision for the lastingness of our felicity.

In these circumstances, one would hardly think it possible, that many persons should be disaffected to our present establishment, under the present family; I mean, from a principle of regard for the public welfare of this nation. But, as there may still be some who are not satisfied, as to the justice, or rightfulness, of the grounds upon which it stands; I will, therefore, give a short account of the grounds upon which they oppose, and we vindicate, the lawfulness of our present civil establishment.

[r] De Laud. Leg. Angl. cap. 36.

[s] Vie de Fenelon, p. 183.

SECT. III.

Of the Opposition made to King James II, at the Revolution.

THE adversaries of our establishment affirm, that the Revolution was founded on such an opposition to the prince, then on the throne, as was contrary to natural reason, and yet more plainly contrary to the Christian religion; and was, on these accounts, a transaction never to be justified, and consequently could not give a right to those who found their title upon it: especially as the throne was at first, and has ever since been, possessed in exclusion of the next heir, and of others nearer in blood to the abdicated prince than the present possessor is; which exclusion is contrary both to the divine law, and to the law of England.

I do freely allow, indeed, that natural reason not only prescribes obedience to civil governors, when they act in pursuance of their great trust, but strictly forbids any opposition or resistance to them, even when they act against it, supposing that the ends of civil government, according to the politics of the country concerned, can be obtained by such submission to their government. For, considering, both the sad effects, viz. murders, oppressions, devastations, &c. that usually and naturally are produced by such resistance; and as well the sacred nature of the authority violated thereby; it must plainly appear, that, when it is not necessary and just, it must be a very heinous crime. Plato compares those persons who resist those governors, in such a case, to the Titans, who were said to have rebelled against Heaven. And it is certainly true, that civil government, and those who administer it, ought to be considered, conformably to the sentiments of many other antient writers, as well as the sacred ones, as being derived from the Supreme Being, and having its authority from him. For he has put mankind into such circumstances, or they are in such at least at present, that civil government is necessary, in order to their security and happiness in social life. Therefore that Being, who certainly intends the happiness of his creatures, must be supposed

supposed to intend that they should live under civil government. And to this purpose he must be supposed to give the civil governors a right to take away the lives of their subjects, when their doing it is necessary in order to preserve or contribute to the welfare of civil government: which right they could not have without his permission. And, by his providence, which either influences or permits all things which come to pass in the world, he sometimes raises men to the government of nations, and supports them in those posts.

IN all these respects, we allow that civil governors, and their government, may be said to be under the immediate influence of the Supreme Being; and that it was designed by him for the good of mankind. And from hence, indeed, it follows, that subjects are bound to yield all submission to their governors as will be necessary to the same purpose. But that it is the Divine will, that subjects should never, in any case, oppose or resist their governors, even though they make the most unjust and tyrannical use of their authority, we cannot justly conclude from any of the considerations which have been mentioned, relating to the divine origin of civil government.

FOR, in order to make these conclusions justly upon those grounds, it must either appear that nothing less than an obligation to absolute submission and non-resistance can make civil governments effectually answer the ends for which the Supreme Being designed them; and therefore that he will have no resistance ever practised, in regard that it would be repugnant to the safety or welfare of the governed society: or it must be supposed, that the Supreme Being does, out of mere regard to the safety and dignity of the governors only, without any regard to the governed, forbid these to resist in any case.

BUT this latter supposition cannot possibly be true: for the Divine Power could not make mankind for the benefit or lust of a few only; for there is no respect of persons with the Creator; he created all alike; and, therefore, must principally design the good of the many, *i. e.* of the governed. And if this be certain, then there cannot be any ground to suppose that the Supreme Being forbids resistance in all cases; because such a prohibition would, in several cases, quite defeat the ends for which government was instituted. For such is the corruption of human

human nature, that princes may, and do, in some cases, make the generality of their subjects very miserable: they may kill, torture, ravish, plunder, &c. or allow others to do it. These miseries may fall actually on a large number, and the fear of them may reach to all and render them miserable. Now can it be supposed that a Being of infinite perfections, who instituted government for the welfare of the governed, can be unwilling that such a miserable people should free themselves from such grievous circumstances, which their princes are highly unjust in bringing upon them: even when it can be done with much less damage to the public than it actually suffers under such a tyranny; and when the resistance necessary in order thereto may probably contribute to put things upon a regular and good foot again, and may produce a reformation of the prince? Such a supposition seems visibly inconsistent with the Divine perfections, and with the end of government. And, on the contrary, it seems most agreeable to the perfections of the Supreme Being, who instituted government for the happiness of mankind, that, when this end is defeated, in a great measure, by the fault of their governors, who have no right at all so to act, and this ill consequence can plainly be prevented or remedied, without any great harm, or even with good to the public (as in several cases it may;) I say, it is then most agreeable to the perfections of the Supreme Being to suppose, that he is willing, and even desirous, to have such disorders corrected in every society, be it greater or lesser; and that regularity, right, and happiness, be restored: consequently the people have a right, and are even under an obligation, to do it.

THE only argument, of any weight, that I have ever seen against this reasoning, is, that if resistance should be allowed by the Supreme Power, even in the case here supposed, namely when it will be for the public good; the consequence will be, that the generality of mankind, who are always too partial to themselves, are apt to judge amiss of things, and therefore, inclined to sedition and rebellion, will often break out into them, when there is no real cause for them; by which disorders frequently happening, civil societies will, in fact, suffer much more harm, upon the whole, in consequence of liberty of a resistance,

than

than they will have good from it, in such cases as I have at first supposed, which will happen but rarely: and therefore it is justly to be concluded, that the Supreme Power, who intends the benefit of mankind in general, and makes such regulations as may tend to promote it upon the whole, must disapprove resistance in all cases whatsoever; because this disallowance will tend to do the most good, or at least to prevent the most mischief upon the whole [t].

BUT, in answer to this argument, I must observe first, that the supposed natural, or necessary, consequence, upon which the argument is chiefly built, is by no means so certain as to bear the weight that is laid upon it; or, in other words, it is a false representation of the dispositions and conduct of mankind, to lay it down, that, if resistance be supposed lawful, and be actually practised by them, in any case whatsoever, for the public benefit of a society, they will, in consequence of this, be incited to resist, very often, when it will be to the great mischief of the public. The history of several nations proves manifestly that this representation is not true. Instances may be given of nations, who, though they have always thought resistance lawful, and have, upon some great occasions, practised it, and even founded their polities upon it, yet have afterwards, for a long space of time, been very obedient to their governments, and quiet under them.

THIS was antiently true of the Romans, who, though they banished Tarquin the Proud, whose oppressions they could not bear, and formed another sort of government, and were afterwards persuaded that they might lawfully resist their governors if they proved tyrannical, yet they were the most submissive obedient people in the world to their lawful magistrates, as Mr. Bossuet himself acknowledges: and, for more than five hundred years, they had no civil wars or bloodshed, on that account, among them. The Spartans were much in the same dispositions: and the case was the same in the kingdom of Arragon, in which a right of resistance was expressly avowed: and other instances of the like kind might be produced. Indeed men seldom rise into rebellions against their governors, unless they are provoked by severe grievances and oppression.

[t] See Essay sur Governm. Civ. p. 64. 69.

2dly, I MUST observe, that those men, who are so ill disposed as to be seditious and rebellious without cause, would be so, whether it be supposed true that the Supreme Being disallows resistance in all cases, or not: for their way of thinking will generally be, that resistance is lawful in some cases; or, whether they think so or not, they will practice it: the reasonings of others to the contrary will have very little influence to restrain their rebellious humour. This will be, in all cases, clearly owing to their fault, and not to the examples or reasonings of others, in either way, of the lawfulness of resistance, or the unlawfulness of it.

THE question then must be, whether it is supposable that the Divine Power disallows resistance, even in those cases where it may do eminent good to the public, only because others, through their own fault, will practice it in cases where it will do harm? Or, in other words, whether the Supreme Power will oblige some people to submit to irremediable misery, for want of resistance, which, in their case, might produce public happiness, only because wicked and corrupt men will resist, in other cases, to the public mischief? when, at the same time, it is true likewise, that, whether he disallows resistance in all cases, or not, yet still, in fact, those wicked men will practice it.

I CONFESS this conduct appears to me plainly to be what we ought not to impute to the Deity; and what he certainly does not use in several cases, where there is a parity of reason for it. It is visible that the Divine Power does permit men, in civil societies, to go to law, for the defence, or recovery, of their several interests; and it is equally visible that bad men do, in fact, very often make use of this liberty to do a great deal of mischief: must it be, therefore, supposed that the Divine Power will allow no man to defend, or recover, his right? plainly not! In like manner, bad men make very ill use of the liberty of going to war: they make it produce much more misery than good to mankind, upon the whole. But does it therefore follow, that the Supreme Being will not have any men war in a good cause, because bad men will actually war much oftener in ill ones? The patrons of non-resistance will hardly say this; and therefore they ought to see that their reasoning against resistance in any case, which is plainly parallel to this, is not conclusive. The Divine Power cannot justly be supposed to will that a

great number of men should be immediately miserable, without any fault of their own, only for the fault of others, and even when it is morally certain that their misery will not contribute to remedy, or prevent, the fault, or unhappiness, of others.

THERE is another ill consequence that will follow upon the supposition that resistance is, in all cases, unlawful, supposing that doctrine to be grounded on the reasoning here lately used. Which is, that this reasoning will extend to prove, that even in Sparta, or in Arragon, or the most limited governments, the executive power must never be resisted, even though, in the constitution of the government, there be an express condition that such resistance may be lawfully made: such a condition there was in the Arragonian government, and may be in others. Yet still this reasoning will be of force, that, if the people be allowed a liberty of resisting in any case, they may, and will, probably, use it in others, when it will do harm to the public. Ergo, they must never be allowed it, in any case: so that this reasoning will quite defeat, and render useless, such constitutions of government; and will, in a little time, make all governments absolute. Which consequences ought not to be admitted: the reasoning proves too much; Ergo, it is wrong.

UPON the whole, if we impartially consult natural reason upon this question, of the lawfulness of resistance, in some cases, we shall find it evident from thence, that it is allowable, under those limitations that I at first put it; (viz.) that, from the consideration of the terrible ill consequences that may attend resistance, in some cases, private subjects ought not, for the personal injuries of one, or few, to enter upon resistance to princes. But that, when the injuries were grievous and general, tending to the subversion of the government, &c. then the generality of the people may do it.

THESE are the dictates of natural reason; and these reasonings are not contradicted, but rather confirmed, by Divine Revelation: this agrees with natural reason, in making the measure of the rights of princes and subjects derived from the act of men. Some indeed have imagined, that God made Adam, and after him Noah, unlimited, universal, and absolute monarchs: but the grants made by the Divine Power to them, in the Scripture, do by no means import so much; or indeed import any

civil authority. They are no more than a grant of dominion over the inferior creatures, and of parental authority over their own families. And even if they had conveyed any civil right of government, that grant would now be wholly insignificant: because it is now utterly unknown who are the eldest descendants from those original monarchs; so that the Supreme Being must, even upon that scheme, be supposed to leave the choice of civil governors to human acts. And this supposition ought the rather to have place, because our Saviour, who could easily have discovered the right heir, according to the patriarchal scheme, did not think fit to do it: but, by his whole conduct, shewed plainly that he intended not to make any alteration in the measures of civil right or obedience. He avoided making any positive determination about questions of this nature. When the Pharisees asked him an ensnaring question about Cæsar's title, he declined entering into that discussion, by saying, "Render unto Cæsar those things that be Cæsar's (whatever they are) and to God the things that are God's." As if he had said, I will not take upon me to be your casuist in these matters of a political nature. Consult, as you ought, the reason of things, your national laws, the transactions between you and the Roman emperor, &c. and from thence determine what things are Cæsar's, and accordingly give him what is his right.

NOR did his Apostles any more prescribe the particular measures of the obedience or submission due to civil governors. They do indeed make pressing general exhortations, that Christians would obey and honour civil magistrates, as being the ordinance of God: and probably in so doing they might have a view to the Roman emperors. But their intent was not to determine either the lawfulness of the title of these princes, or the particular measures of submission or obedience due to them. It was chiefly to oppose a notion, which then prevailed among the Jews, and from them among many even of the Christians, that no obedience or submission was due from themselves, who were the children and people of God, to heathen magistrates. Of this notion, and practices suitable to it, among the Jews, especially the Pharisees and Zealots, we have sufficient evidences in Josephus's Antiquities and de Bell. Jud.

AND

AND though the wiser and better sort of Christians were not infected with such notions as these, yet we see that, even in the apostles time, there were many who had a wrong notion of the liberty obtained by Christ for his followers. There were some, as we find, from St. Peter, 1 Epist. cap. ii. 10, and from St. Jude, ver. 8, who carried this point so far as to speak evil of dignities, and to despise government. Which occasioned the exhortations of the apostles that they should not “use their liberty for a cloke of malicioufness, or for an occasion to the flesh; but, as the servants of God, would honour all men, love the brotherhood; fear good, honour the king.” That to these sentiments and dispositions of some Christians, the apostles had a particular view, in their exhortations, is visible from the manner of them; and farther likewise from the comments of the antient fathers of the church upon them.

CHRYSOSTOM, in 23 Hom. ep. ad Rom. says that a great fame had been spread abroad, which charged the apostles with sedition and innovation, as if they had directed all their speeches and actions to the subversion of the common laws. St. Jerom, in his comment upon Titus iii. 1, has these words concerning that precept: “Propterea editum puto, quia Judæ Galilæi per id tempus dogma vigeat plurimos sectatores.” Origen, lib. ix. in epist. ad Rom. says, “ordinat quidem per hæc Paulus ecclesiam Dei, ut nihil adversi principibus et potestatibus sæculi gerens per quietem et tranquillitatem vitæ opus justitiæ et pietatis exercent. Si enim ponamus, verbi gratia, credentes Christi potestatibus sæculi non esse subjectos tributa non reddere, nec vectigalia pensitare, nulli timorem, nulli honorem deferre, nonne per hæc rectorum et principum merito in semetipsos arma converterent?” And that this was the view of the apostles, we are well informed from a much more antient writer.

IRENÆUS, in his fifth book against heresies, has the following passage. “Sicut ergo in principio mentitus est diabolus, ita et in fine mentiebatur dicens, ‘Hæc omnia mihi tradita sunt, et cui volo dono ea.’ Non enim ipse determinavit hujus sæculi regna, sed Deus. Regis enim cor in manu Dei est. Et per Salomonem ait verbum, ‘Per me reges regnant, et potentes tenent justitiam: per me principes exaltantur, et tyranni per me regnant terram.’ Paulus autem apostolus

“ hoc ipsum ait, ‘ Potestatibus sublimioribus subditi estote. Non est
 “ enim potestas nisi a Deo : quæ autem sunt, a Deo dispositæ sunt.’ Et
 “ iterum de ipsis ait : ‘ Non enim sine causa gladium portat, Dei enim
 “ minister est : vindex in iram ei qui male operatur.’ Quoniam autem
 “ non hæc de angelicis principibus dixit, quo modo quidam audent ex-
 “ ponere, sed de iis quæ secundum hominem sunt potestates, ait : ‘ Prop-
 “ ter hoc enim tributa penditis, ministri enim Dei sunt in hoc ipsum
 “ deservientes.’ Hæc autem Dominus confirmavit, non faciens id quod
 “ a diabolo suadebatur, tributorum autem exactoribus jubens pro se, et
 “ pro Petro, dari tributum, quoniam ministri Dei sunt in hoc ipsum
 “ deservientes.” It is evident that there were Christians, in the age of
 Irenæus, who thought that the secular magistrates then in the world were
 not ordained of God, but of the devil, and upon that account refused
 to obey them : to which wrong notions of theirs, the apostle had princi-
 pal reference in his exhortations to obedience.

Now, if this was the case, then there is no reason to press the texts so
 far as some have done, as if the apostles had intended to carry the duty
 of submission farther than natural reason had done before, and to enjoin
 absolute submission, in all cases, to the most tyrannical princes. The
 other view is sufficient to answer the force of their exhortations ; and
 will best connect the several parts of that famous thirteenth chapter to
 the Romans.

THE chief argument, by which the patrons of absolute submission,
 in all cases, deduce that duty from the New Testament, is, the considera-
 tion that the apostle must have been sensible that the reigning Roman em-
 perors were, at that time, persecutors, and therefore he must have had
 a view to them. And if they were to be submitted to, then certainly
 the worst of princes ought never, at any time, to be opposed. But to
 this I say, that when the epistle to the Romans was written, the reigning
 emperor did not persecute the Christians. They lived in a tolerable
 measure of quiet. Origen expressly says, “ Non hic de illis potestatibus,
 “ quæ persecutiones inferunt fidei. Quis enim dicendum est Deo obedire
 “ oportet, magis quam hominibus. Sed de istis communibus dicit quæ
 “ non sunt timori boni operis, sed mali [a].”

[a] Origen, Hom. 13 Rom.

BUT, say the objectors farther, though we should allow that there was no persecution at that time when the epistle was written, yet the apostle could not but know that such would shortly ensue; and therefore he must design to guard and fortify Christians against them. To this I answer, that no one ought to presume what the apostles ought to have done: they might have several good reasons to say nothing of this matter, but to leave Christians to their natural notions of right, and of their duty, in this point. It is sufficient that we account for what they did say, without having recourse to this supposition. Besides, it is evident that St. Paul did not intend to place this case of persecution in their view; because he did not give them instructions suitable to it. This duty of absolute submission, in all cases, to all princes, and in all countries, being a point of morality quite new to the greatest part of the world, at that time, the apostle would certainly have both explained, and pressed it more particularly and forcibly than he doth, if he had meant it as a duty incumbent on all Christians.

SINCE, therefore, neither he, nor any other of the apostles, have done this, and since their exhortations may be sufficiently accounted for upon another view, without any necessity of supposing them to mean this, we may conclude that the gospel hath not made any alteration, in this point, from what the light of natural reason might have discovered to be our duty: which is, to submit as far as the laws of the society, of which we are members, considered together with the public good, do oblige us; and to resist when it is necessary for us to do it, with regard to the same public good.

Now, these being the true measures by which Christians ought to regulate their submission, the opposition made, in this nation, to King James II, and the settlement subsequent to it, may from thence be sufficiently justified. That unhappy prince did not only violate particular laws of great importance, but he discovered a settled resolution to subvert the chief part of the civil constitution; and, by destroying all the great branches of the subjects liberties, to make himself an absolute monarch. And, if this had been compassed by him, the nation would not only have lost their civil liberties, but would, at the same time, have been reduced under a slavery, yet more grievous, to the pope of Rome. King
James.

James had the utmost zeal to gain that point, and must have compassed it by degrees.

IN these circumstances, when two such grievous kinds of servitude were coming upon them, the nobles and people had just cause to take all proper measures to defend their rights: which when they did, by calling over the prince of Orange to protect them, the king, fearing to abide the scrutiny into his conduct that would be made by a free parliament, and the securities they would oblige him to give against the like for the future, deserted the throne, and left the nation destitute of all government, and likely to run into confusion. In this case, the peers, the gentry, and the body of the people, had certainly a right to provide for their own security and peace. And as it was visible, that these could not be hoped for, from a prince of his disposition and religion, therefore they had a right to put the government into the hands of another more fit person.

BUT here perhaps it will be said, that, though Christians in general might not be forbidden, either by the law of reason or by the Gospel, to resist their princes, upon such an occasion, yet the laws of England, which were in force before the Revolution, did make all kinds of resistance to the king unlawful. The acts of 12 and 13 Charles II, which vested the militia in the crown, declared that neither any person single, nor the parliament collectively, had any right to take arms against the king, or against those who were commissioned by him. And to this purpose a declaration was required to be made by every person who bore any office. Now, whatever rights the people of this nation might have otherwise had, they were then divested of them, by their own act.

To which objection I answer, that it was well known not to have been the intention of the militia act to alter the constitution, or introduce an arbitrary government. It designed to leave the subjects to their civil rights: and privileges, without a right of defending them, are of very little significance. Therefore it may be concluded, that the parliament did not intend to forbid such a defence as was necessary to secure them against the illegal attempts of the prince, and of those commissioned by him. Accordingly, when the bill was
debated

debated in the house of commons, solicitor Finch allowed, that by the king's commission, which was not to be resisted, was meant legal commission. And, in like manner, it is to be supposed, that, when the king is not to be resisted, he must act according to law, or not very grievously against the public good: and this being supposed, those laws abovementioned did not make any great alteration in the question before us.

BUT, if it had been certain that the intention of the law was to forbid all persons to defend themselves, even when the king, and those commissioned by him, should act the most illegally, and endeavour to destroy the constitution, I should then make no scruple to affirm that the law would have been null in itself: since it is not supposable that the people of England should have authorized their representatives to consent to a law that would virtually ruin the whole constitution, which they were intrusted to preserve. Upon the whole, therefore, the Revolution, in 1688, was rightfully made.

S E C T. IV.

Of the Antient Hereditary Right; and the Breach of it, by the Settlement of the Crown which is in Force at present.

SOME persons may object that, though the Revolution was rightfully made, as far as the ejection or exclusion of King James II, yet the hereditary right to the crown ought to have been strictly adhered to. And as this was not done then, nor in the subsequent settlement, which has taken place at present, therefore, they say, this settlement is unlawful. Some of these objectors found the indefeasible hereditary right of succession to the crown, as they do the right of absolute power, upon that which is called the patriarchal scheme. But I have already shewn that it is a sufficient confutation of this scheme, that we cannot know, at present, who is the nearest and right heir, according to that scheme, in any one kingdom of the world:

world: and, therefore, it cannot have any effect, but in encouraging all turbulent spirits to make commotions, in hopes that they may get a crown, which will, in that case, according to this scheme, be their own of right.

Now it is not credible, that the Supreme Power should have ordered such a plan of government, of which those who were to be the governors should be utterly unknown; and which would be naturally productive of so ill effects. If the Supreme Being had designed that the world should be governed according to this scheme of government, he would either have made the persons to whom this right should belong, always known; or at least our Saviour Christ and his apostles would have discovered them, and have made them known for the future. Which since they have not done, we may justly conclude this scheme is utterly groundless and false. And if there is no ground for the claim of an indefeasible hereditary right from the law of nature, or from the holy scripture, there is certainly none from the law of England.

It must indeed be granted, that the general custom in this nation has been for the next of blood to inherit the throne; and that this proximity was, in ordinary cases, the rule settled by law: but that this was supposed to be an unalterable rule, or to give a right absolutely indefeasible, I deny; and the contrary must appear to any one who is competently skilled in the history of our own nation, or in those of the other northern nations from whom we descended. If, in order to throw some light upon our own histories, we first look into those of other nations, we shall find, indeed, that they had no small regard to the royal lineage: I must confess, we sometimes meet with the mention of hereditary right. “Halfdanus Niger, cum regnum avitum et hæreditarium sibi deposceret, nemine repugnante, id obtinuit.” Snorro Stur. p. 660. “Olavus regnum successionis jure accepit.” Ibid. p. 61. “Post Ingialtum Ilradæ regnum Upsalense à prosapia Inglingorum devolutum est: priscae videlicet illius familiæ, continuo ordine sibi succedentibus, stirpibus.” Ibid. p. 52. “Anundus imperium Suioniae successionis jure occupavit.” Ibid. p. 42. But it is also as plain, that they did not so confine themselves to the strict-

est proximity of blood, as not to break in upon it when there was just reason for so doing.

WE find numerous instances in the histories of both the northern kingdoms, in which the nearest heirs, for weighty reasons, as infancy, inability, or extremely ill conduct, were set aside, and others of the royal family advanced in their room, by the states of the kingdoms; who, in such cases, always looked upon themselves to have the right of thus acting for the good of the public. In about 400 years, i. e. from A. D. 1048 to 1448, when the house of Oldenburg first came to the crown of Denmark, there were about twelve deviations from the strict hereditary right of succession.

CONFORMABLY to these notions and practices of the northern nations, their colonies in these parts of Europe have acted. The Franks, in particular, under the two first races of their kings, retained in their great councils, though not the right of electing their kings upon all occasions, yet at least the right of interposing upon important ones, and taking such a person out of the royal family as they thought the good of the nation required, though he was not nearest in blood. That this practice obtained for a considerable time among them, the best French writers agree [b]. Mezeray says [c], “*Les rois se prenoient toujours de la race regnante : trois conditions estoient requises pour les faire. La naissance, il n’importoit pas qu’il fut légitimé. La volonté du père : et le consentement des grandes. La dernière suit presque toujours les deux autres.*” And the Abbot Vertot has proved sufficiently that the Franks, though they had generally so far a regard to the hereditary right, as to confine their election to the royal family, yet they made no scruple to forsake the strict proximity of blood, when just occasions required them to do it; but then took any prince of the royal family who seemed most likely to promote the public good [d].

WE are not, therefore, to wonder if the like freedom was used by the Saxons, who appear to have adhered to the old Gothic constitu-

[b] See Hottoman, *Francogallia*, Dissert. p. 15.

[c] *Hist. Abr.* tom. i. p. 76.

[d] Vertot,

tion, and to have preserved their liberties at least as much as the Franks. We find, accordingly, in our histories, accounts of frequent deviations from the strict proximity of blood: and these made not in a tumultuary way, but by the great councils, as “*de jure*,” upon occasions that required them. And the whole nation, even those persons who might have claimed the crown from that proximity of blood, acquiesced in their exclusion. It would be too long to take notice of all the deviations in the several kingdoms of which the Saxon Hephtharchy was composed; and, therefore, I shall only mention those in the kingdom of Westsex, which was the chief, and which came afterwards to be possessed of all the others. In this kingdom, from Cerdick to Edward the Confessor, supposing them both included, there were thirty-three kings, reckoning in the four of the Danish line: and, of these, there were not above two parts in three, who, when they ascended the throne, were nearest in blood to the kings they respectively succeeded. And a much less number still were, strictly speaking, the right heirs of Cerdick, by proximity of blood. This may be easily seen, by looking upon plate IV, tom. i. in Rapin’s History. And from many of our antient historians it evidently appears, that many of those deviations were either made, or approved and confirmed, by the acts of the witenagemote.

OFFA acknowledged that he was chosen “*ad libertatis vestrae tuitionem, non meis meritis, sed sola liberalitate vestra* [e].” Athelstan, though a bastard, and so could have no title, was elected; and Edred was elected and preferred before the sons of Edmund his predecessor. Edwin was deposed for his ill conduct; and Edgar elected, by the will of God and the consent of the people. After the death of Edgar, A. D. 975, there being a great difference between the nobles of the realm, about electing a new king, some siding with Ethelred, one of his sons, others with Edward his other son; all the bishops, abbots, and nobles, assembled in a great council, to determine their right title to the crown; wherein they elected Edward the Elder [f].

EDWARD the Confessor was raised to the throne by consent of a general assembly, in prejudice to the right of Prince Edward, son of

[e] Addit. to M. Paris.

[f] Ingulph. p. 889.

Edmund Ironside, who had the first hereditary right of the Saxon line [g]. And when Edward the Confessor disposed of his kingdom in favour of William the Conqueror, as it is said in preference to Edgar Atheling the right heir, our best historians say it was done with the consent of the nobility. William of Malmesbury (speaking of the expostulations which William duke of Normandy made with Harold, by his embassadors, about his taking the crown) says, that Harold returned for answer, "*De regno, præsumtuosum fuisse quod absque generali senatus et populi conventu et edicto alienam illi hæreditatem juraverit.*" Doctor Hody says, that Malmesbury's judgment is of great weight, because he wrote within sixty years after the time, and was well skilled in their antiquities.

THESE instances in the Saxon, and others that might be produced in after times, shew sufficiently, that, though the nation thought themselves generally bound to adhere to proximity of blood in the succession of their kings, yet that this was not thought so indefeasibly obligatory a law, but that the great council had a right to set it aside upon very important occasions, that required their so doing for the public welfare. And this having been our original constitution, it was but in just agreement with it that the statute was made, 13 Eliz. cap. 1. that it should be high treason to declare that the queen and parliament had not power to limit the succession to the crown; supposing there were just reasons for so doing.

THE act of recognition of King James the First, in what terms soever it be expressed, yet having been made while 13 Elizabeth was in force, and not intending to repeal it, must be interpreted in consistency with it. And supposing it was right in Queen Elizabeth to limit the succession of the crown, upon good reasons, the same might as justly be done by the parliament in 1680, and at the settlement of the Hanover succession.

IF it be said that this statute of 13 Elizabeth supposes an act to be made by the king as well as the parliament, whereas at the Revolution the hereditary right was set aside by the lords and commons only:

[g] See Rapin, vol. i. p. 422 and 423.

I answer, first, that this appears to have been several times done in the Saxon times; the next heir was set aside by the witenagemote, after the death of the preceding king, and before there was a new one elected. But if this had not been so, yet, in case of great and real necessity, all such forms and niceties of law, and even laws themselves, ought to give way to that supreme law, the safety and welfare of the whole community: for this is the great point for which all laws are made. I do agree that in this nation the hereditary succession to the crown is agreeable to law: it is for the public service; and it ought to be kept inviolably, whenever it can be consistently with the public good. But when this must be greatly endangered by adhering to it, when the whole will be at stake by so doing, then neither forms, nor any such laws, can be any longer adhered to: the substance must and ought to be preserved. All particular legal constitutions, made only for regular and peaceable times, ought to give way upon such pressing occasions; for in cases of great moment and distress, some laws we must and justly may transgress.

THE only remaining question then is, whether, at the Revolution in 1688, when the next heir was an infant, in the power of his father, who was of the popish religion, and the next heirs to him in succession were all Papists, there was not such a necessity for deviating from the order of succession? or, to put the case more generally, whether this last circumstance, of the next heir to the crown being of the popish religion, will not always be a reason to exclude him from succeeding to it? From the known principles of popery, and the experience of many nations in Europe, it is evident, that this religion will probably lead a prince, who is of it, to endeavour to introduce it among his subjects. For the precepts of their religion require them to do it; and they make no scruple to acknowledge it to be their duty, even to do it by force. Bossuet, bishop of Meaux, whatever moderation he affected on some occasions, yet asks what reason is there to exempt heretics out of the number of those malefactors whom God has put the sword into the magistrate's hands in order to punish? The king of France takes an oath at his coronation, that "*hæreticos ab ecclesiâ denotatos exterminare studebo.*" And the general assembly of the clergy of France highly applauded the late king's conduct for act-

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ing accordingly : and, in the present king's time, the same assembly have likewise desired this prince to use force for that purpose.

THE clergy of that communion, as they will always be zealous and assiduous to engage princes to act in the same way against the heretics, so they will generally succeed in those applications. That society of Jesus, which, since its foundation, has most distinguished itself by its activity and fiery zeal, has almost always one of its number a confessor to each prince ; who, if the prince has any sense of religion, is ever improving and working upon it ; to excite him to persecute the dissenters. If his penitent has any hours of remorse for his sins, any inclination to devotion or piety, these are always made use of to inspire a zeal for the conversion of heretics, as being the most effectual way to cover a multitude of sins : and it is not to be wondered if human nature, desirous to indulge its passions as far as possible, falls easily into a sort of piety which atones for the gratifying some passions by the exercise of others ; which, instead of forcing him to forsake his darling lusts, and have an aversion to them, enjoins him to have a hatred to heretics.

SUCH a disposition, therefore, is not difficult to be raised in the minds of princes of that communion ; and when it is raised, it will always be too hard for any temporal considerations, except his own interest, to balance. When a prince thinks he can gain heaven, while he has all the enjoyments of earth at the same time, no regards to the civil welfare of the community, over which he is set, could touch him, if they did appear to him. He will easily be persuaded that, though the use of force may impoverish and depopulate his kingdom, yet he ought to pursue those methods, in view to the true interest of his people, as well as to his own. So that no consideration, less than his own immediate interest, can be supposed forcible enough to withhold him, and even that will not do sometimes.

CARDINAL Bentivoglio tells us, that Philip II said, that he would rather lose the United Provinces entirely than suffer them to remain heretical ; and so full of gloomy zeal was the temper of that prince, that I doubt not but he would have lost Spain itself had the case been the same. One cannot read without horror the many burnings which he made upon his going to Spain ; and this after his confessor had preach-

ed in England, very warmly, of the unlawfulness of persecution. And this cruelty, by permission of the Divine Providence, had its effect, in rooting up entirely the protestant religion in Spain: and his successors, by the same methods, kept it from entering again. Some of the princes of the house of Austria had formerly a more moderate spirit, but of late they are come into the same way of thinking. Their oppressions of the protestants in Bohemia occasioned those commotions, which might easily have ended with the loss of that crown; if Providence, for the punishment of the protestants wickedness, had not permitted that terrible turn of affairs, which ended in the entire suppression of their religion. And since that, there has been the like danger of losing Hungary, by the oppression of the protestant subjects there: nay so zealously fixed was the court of Vienna in that disposition, that, even during the last war, while they were delivered by the arms of protestants, they made the greatest difficulty of giving any tolerable terms to their protestant subjects in Hungary.

IN Silesia and Moravia, nothing but the fear of the king of Sweden could have induced them to restore the Lutherans their churches. And as soon as their fear was over, they have since practised all the oppressions they well can, in order to extirpate the protestants in those countries; and they have done it with too much success; for they that, about a hundred years since, were in such numbers, that Sir Edward Sandys says, “touching Germany, I have seen an old estimate of it, by such as favoured the papacy, that, in the beginning of the reign of the emperor Ferdinand, there was not above one part in twelve of the people that were catholics, which now, in my opinion, must needs be otherwise. For comprehending in it Bohemia with its appurtenances, I should think that near one sixth part of the people were devoted that way; their number being increased and perhaps doubled since that time, by the sedulity of many of the prelates, and by the oppressions of the duke of Bavaria; who, using the advantage of the troubles of the protestants elsewhere, have, on their part, forced the protestants that were under their influence, to quit their religion, goods, or country [h].”

[h] Europ. Specul.

THE crown of France, however opposite they have always been to the house of Austria in other matters, have pursued the same conduct with regard to their protestant subjects. Though, in regard to the great power the protestant party had obtained there, and to the unsettled condition of their affairs at some seasons, they have been obliged to tolerate the protestants, and even to allow them some privileges and securities; yet, whenever they have thought it in their power to oppress them, they have never failed of raising a persecution; as appeared in the reigns of Francis II and Charles IX, at which time was that deplorable Parisian massacre, in which we see the true disposition of popery towards heretics. If the affection which Henry IV had for the protestants made him treat them somewhat better, and the unsettled condition of the beginning of the next reign occasioned their having a toleration sometimes, and good words, yet Lewis XIII and his prime minister Richlieu had always a formed design to reduce them by degrees, and in the end quite to extirpate them; which design they pursued with unhappy success as soon as they had opportunity. The late King Lewis XIV, though he had great obligations to them, for the share they had in keeping his crown upon his head, during his minority; which obligations he himself acknowledged, and at first not only confirmed the edicts of his predecessors in their favour, but even, in the most solemn manner, declared them irrevocable, yet he was soon induced, by cardinal Mazarine, to form a resolution of their utter extirpation, whenever it should be in his power: and the means to this purpose were concerted with Don Lewis de Haro, prime minister of Spain, in the Pyrenean treaty. How effectually they were pursued, we have had sufficient knowledge, from many thousands, one might almost say millions, of his unhappy subjects, who, driven out of his kingdom, were obliged to beg or earn their bread through all the protestant countries in Europe; having, at the same time, left others, who, not being able to get away, and harrassed and tormented in a manner less supportable than death itself, were obliged to abjure their religion. And it deserves to be remarked, that the zeal of this prince did not extend itself only to his own kingdom: he influenced the duke of Savoy to persecute his subjects, the poor Vaudois; declaring that, in a treaty which he had with that prince, and by which he was obliged to

to take arms against the king's enemies, the present Vaudois were intended to be comprehended. Their being protestants was sufficient to make them be considered as his enemies. Upon this ground he joined his troops with those of the duke, either to extirpate them, or to make them change their religion, which they tried by all sorts of cruelties.

THE elector Palatine, of the Rhine, has shewn, not long since, that he did not want any incitements to this purpose. On the contrary, the remonstrances of the neighbouring powers have not been sufficient to make him desist from molesting and oppressing his protestant subjects. And that this zeal for persecuting heretics has warmth enough to keep itself alive, and even ardent, in the coldest countries, we have instances in the history of Sweden. As soon as John, king of that country, in 1571, had embraced the Romish religion himself, his next course was to endeavour to introduce it among his subjects. To this purpose he receives a nuncio from Rome, endeavours to set up an university at Stockholm for the papists, and poisons his brother, who was averse to it. His son Sigismund pursues his steps, insists upon churches for the papists in every city: brings in foreign troops to intimidate his subjects. However, he makes a truce, breaks his promise and steals away, and returns with another foreign army, of six thousand men; makes a truce again, with a promise of going to Stockholm, but again breaks his word. Upon which the states of that kingdom, being fully convinced that no trust could be put in one influenced as he was by his religion, renounce their allegiance to him; while, at the same time, to shew their regard for his family, as far as was consistent with the state of the nation, they offer the crown to his son, if he will renounce popery; but found themselves at last obliged to give it to a protestant prince, Charles IX, whom they could trust.

To come home to our own island, the queen regent of Scotland shewed sufficiently her inclination to persecute and keep no measures with heretics. And we all know what followed here in our own nation, upon the first Queen Mary's being a papist: how many bonfires of heretics it caused; how soon it effected the ruin of the Reformation that had been carried on in the reigns of Henry VIII and Edward VI; and how it would, if it had continued, probably have established popery beyond
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all possibility of being shocked. It was in vain that she made the most solemn promises to the Suffolk-men, to whom she was obliged for her crown, that she would preserve their religion. They found no more mercy from her than did the rest of the kingdom. This might justly have made King James II to have been less trusted than he was; when, at his coming to the crown, he declared before his council, in the most solemn manner, that, though he was a papist himself, he would preserve the protestant religion, especially the church of England, as by law established. This declaration he afterwards repeated, in his speech to both houses of parliament, and published it in the most authentic manner. He was a prince that has gained a reputation for justice, and especially for keeping his word. But, notwithstanding all this, it is well known what open attempts he soon made upon the universities, the bishops, and the whole body of the clergy; and in how violent and arbitrary manner he proceeded, as far as he durst, both in the ecclesiastical and civil courts: how he declared too, that the reason of his proceeding contrary to all prudence, and in so violent a way, was because he was solicitous to have the merit of converting the nation, and establishing popery here before his death.

I THINK, here has been experience enough to convince mankind, that, in general, there is the highest probability that a popish prince will endeavour, by all methods in his power, even the most violent ones, to introduce popery into his dominions. And I believe no person will quote the instances of King Charles II, and another prince, late king of Poland, to the contrary. Mankind in general are sensible what were the dispositions of the former of those princes in matters of religion, and are not therefore to wonder he should not have engaged in an enterprize in which he could not but apprehend great embarrassments and dangers. And whether the disposition of the other prince was not much the same, I leave to mankind to judge.

THE Pretender to these crowns is very well known to be of a very different disposition; he has never so much as professed any disposition to hear what could be said of our religion, as Henry IV of France did, in his distress, for that of Rome. When he was landed in Scotland, he was so far from doing this in any of his declarations, that he would not

so much as promise to tolerate the protestant religion. Whether this stiffness proceeded from the influence of the high papists about him, or from his own temper, one does not know. But from which ever cause it flowed, it shews sufficiently what would be to be expected from such a person, if he was ever to be possessed of the crown. Though, indeed, should he, in view to gain these kingdoms, make any concessions in favor of the protestant religion, I could not think him fit to be trusted, in such a case, because it is a determined point in the church of Rome, that an engagement with heretics, contrary to the interest of the church, is not binding.

CARDINAL d'Offat tells us that Clement VIII did very much press the king of France to join with Spain, for the invasion of England; but he was answered, that the king was tied by an oath to the queen of England. To which the pope replied that the oath was to an heretic, but that he was bound in another oath to God and the pope [i]. By which he probably meant that oath which, we are told, the kings of France take at their coronation, that they will "*universos hæreticos, ab ecclesiâ denotatos, pro viribus bonâ fide exterminare studebo.*" And an oath, to the same purpose, is taken by all popish princes. And it is well known what the resolution and practice of the council of Constance was in such a case, in burning John Hus and Jerom of Prague, though the emperor gave them a safe conduct: the council insisting, that the emperor could not hinder the church from exercising her just authority, in the punishment of heretics, whenever she had it in her power.

AGREEABLE to the notions of this council, was the declaration made by Derbyshire, an English Jesuit, in Queen Elizabeth's time; who, being in France, and speaking of Mary queen of the Scots, then in custody, said, "besides that all the catholics in the realm of England were "at her devotion, there were," said he, and thanked God, "diverse "that were well affected to her, which was no small miracle that God "had so blinded their eyes, as they should be so inclined to her, that in "the end would yield to them their just deserts, unless they returned to

[i] Card. d'Offat, Epist. 47. ad Duc. de Villeroy.

“the catholic faith [k].” And to the same purpose speaks the Letter (in Echard’s History) written, during the violences of King James the Second’s reign, when the papists thought themselves sure, to a person who was entirely in with the king’s measures, as to absolute power in the state, &c. but was a protestant. It is to exhort him to change his religion in time ; and threatens him that, if he did not, there would be little distinction made between those against the king in all his measures, and those that were so in that point which he most set his heart upon. And that there is great probability a popish prince should in the end succeed in converting the nation, I shall, without further reasoning, content myself to prove by two or three authorities.

POPE Gregory XV, writing to Charles I of England, when that prince was in Spain, says, “and indeed you cannot give a greater consolation to the people of the Christian world, than to put the prince of the apostles in possession of your noble island ; the which will easily come to pass, and that without difficulty, if you open your heart to the Lord who knocks, upon which depends all the happiness of that kingdom.”

FATHER d’Orleans, who wrote of the Revolution of England, and was well able to judge of what relates to it, speaking of the consequence of a popish successor, says, that it must perpetuate it, *i. e.* the Romish religion upon the throne, and in time bring it to prevail among the people [l]. And Pere Daniel, in his History of France, observes, that, according to the natural course of things, there was no doubt, but if the then king of Navarre had succeeded to the crown of France without opposition, heresy would have become the established religion, and in time the catholic religion would have been abolished [m].

FROM the reasons and authorities that have been here alleged, I take it to be plain, that the establishment of popery in the throne of this nation would sooner or later, and indeed in no long time, prevail to introduce, either by address, or allurement, or terror, the said religion into the whole nation. This is a consequence which is of the utmost importance, even to Deists, &c. much more to those who truly believe the

[k] Strype’s Ann. Reform. under Queen Elizabeth, vol. ii, p. 86.
[l] Daniel, in Abridgment of Henry III.

[m] F. d’Orleans, Hist. Stuarts,

Christian religion, and are desirous to practise it in its purity. There is another consequence of a popish prince's obtaining the throne, which I do not indeed regard as equally certain with the former, but which is so probable as to deserve the consideration of every one who loves his native country. It is, that the subversion of the protestant religion would end also in the subversion of our civil liberties. For first, if there should ever be a revolution in favour of a popish Pretender to our crown, it must be made by force. For undoubtedly, in all events, a great part of the nation will be firmly attached to the present royal family, and will make a stand on their behalf. Now a state of war and violence continuing for any time will give great opportunities and pretences for exercising illegal and arbitrary power: this Lord Herbert observes to have been the consequence of the civil wars between the houses of York and Lancaster. And a popish prince, who has been educated under absolute governments abroad, as every such pretender will have been, must, in all probability, be himself very much disposed to absolute or arbitrary power. And he will be put upon it farther by his adherents, who will want to have the exercise and benefit under him; especially by the clergy of the church of Rome. It is true, that, in former Revolutions in this nation, some of the conquering party interposed to save the constitution, and even the clergy were zealous for civil liberty. And this conduct of the latter was founded in policy, during those times, in which they had such an influence over the people, that they could gain what points they would, or at least could preserve themselves and their interests independent of the crown. In this case, they affected to depend only on the pope. But since the Reformation, and the change that has been made in the dispositions of people in general, their conduct has been different. They are every where become the instruments of bringing the whole power into the hands of one person; for getting whose favour, or prevailing upon his bigotry, or that of his ministers, they have a much fairer chance, than for influencing the representative body of a nation, to any measures prejudicial or oppressive to the secular or spiritual liberties of the whole. They cannot easily make transubstantiation go down, or sit easily upon the stomachs of any nation, in this enlightened age: nor can they think of preserving those gains, rising out of other superstitious practices, where

where there is any freedom of canvassing or judging of them, or where the people have civil liberty, and consequently a spirit of freedom, &c.

FATHER Orleans shewed plainly his way of thinking about this matter, when, speaking of King William III, and the English liberties, he said, that prince “eut plus dû contribuer à les détruire qu’à conserver, “étant après le prince des Galles le plus proche héritier du roi [n].” And Sir Lionel Jenkins [o], who was very much in the confidence of King James II, lets us know what he thought that prince would have done, if, after any opposition to this right, he had prevailed. “In case, says he, “such a bill should pass into a law (meaning the exclusion bill) and the “duke should try, as undoubtedly he would, to cut through with his “sword, and should overcome, he will have the same power to set aside “all laws, both for religion and property; the power will be in the “hands of the conqueror, and certainly he will change the government.” These reflections, of a person who knew King James II, may justly have great weight, in order to convince us what he was likely to do, if he had continued upon the throne; and also what will, in other cases, be likely to happen to us, if a prince of that religion should come to be possessed of the throne. Popery would be introduced; and with it slavery; or at least great confusions and miseries. Now against these consequences it is of the utmost importance to be guarded: it is, therefore, of necessity to set aside all popish princes from succeeding to the throne; and, being necessary to the public welfare, it is of consequence just. Therefore, at the Revolution and afterwards, our nation had a right to exclude all the popish branches of the royal family, and to apply themselves to the illustrious house of Hanover; which, after the popish branches, is the nearest in blood. They therefore have the best hereditary right; consequently, the settlement upon this family is likewise right.

BUT here some nice observers will, I make no doubt, be ready to ask, is not my reasoning in defence of resistance, in this tract, inconsistent with, or repugnant to, the reasoning I have used, in the former part of

[n] Orleans, Revol. Angl. tom. iii. p. 436.

[o] Echard's Hist. vol. iii. p. 622.

this work, against the use of force in matters of religion? And, in order to judge the better of this matter, I will set forth those two reasonings.

1st, THE reasoning against force in religion, as used in the former part of this work.

IT must be admitted that force, properly applied, on the side of truth, might, in some particular cases, be of service to religion; by taking heretics out of the way, and preventing them from infecting others. But yet it is not supposable that the Supreme Being should allow such force to be used in any case: because if, by natural reason, it can be presumed, that he allows any prince to use force on any occasion, by consequence all princes will be obliged to use force whenever they judge it will be of service. But to allow and even oblige all princes to do this (considering that princes will be much oftner in error than in the right) must be greatly to the disadvantage of religion; which, on the other hand, would not suffer any disadvantage, in general, but the contrary, if the use of force was not allowed: therefore it is not supposable, that God should allow it to be used in any case.

2^{dly}, THE argument that may be formed, in like manner to this, against resistance to princes in any case, must be nearly as follows.

CONSIDERING men as they will be in all times, it must follow, that if the Divine Power be supposed to allow resistance to princes in any case, even when it might do good to the public; then men will actually use it in many cases, when it will do harm to the public: insomuch, that, upon the whole, it must cause much more hurt than good to mankind. And we must therefore conclude, that the Supreme Being, who desires the good of mankind upon the whole, will not permit that men should, by resisting in any case, use a liberty that, in event, will be so pernicious to others, by encouraging them to do it when it will be hurtful to the public: we ought to think, that, on the account of the ill consequences which may attend it, he will not allow any men to resist princes at all; but does, for the sake of the general good of mankind, oblige them to forbear it in all cases whatever.

HERE it may be asked, Are not these two arguments exactly parallel? and, therefore, if the former concludes against the use of force in religion, must not the latter conclude as strongly against resistance to princes

in any case? I answer, No; the Arguments are not parallel: there is a very important difference between them. In the former case, religion may do not only as well, but even much better, in the world, without the use of force. Men might be happy both here and hereafter, if they endeavoured it, even supposing no force was ever to be used in religion. But, in the latter case, many thousands of men may be often made immediately miserable without resistance. Now it is not conceivable, that God will oblige some men to continue always in such a miserable condition, merely because, if they get out of it by resistance, even when that resistance will not hurt the public, others will be encouraged to resist in improper cases. For the former ought not to be made and kept miserable for the fault of others.

If it be said, that the general good of mankind requires they should be so; I answer, that whether some do resist, or not, their conduct would have but little influence upon others: the good of mankind will not, in fact, be much more secured by it. Resistance will always be made by the greatest part of mankind, when they are able to do it. To suppose, therefore that God obliges men not to resist in a good cause, in regard that bad men will be encouraged to resist in a bad one, is to suppose that God obliges the former to continue in misery; 1st, On account of the fault of others, and not their own: and 2^{dly}, When mankind, in general, will have, in event, little or no benefit by so doing. But this supposition is not agreeable to reason, or to the goodness of God; and therefore we may justly conclude, that God will allow men to resist, when their so doing is consistent with the public good.

FARTHER, it must follow, from the abovementioned argument, that the supreme executive magistrates, even of common-wealths, such as the doge of Venice, the states of Holland, &c. are irresistible, even if they act ever so tyrannically. But no reasonable man will allow this, and therefore the abovementioned argument cannot be justly conclusive. To suppose that the Divine Power will never have any resistance practised, is, in consequence, to encourage the malignity of ill princes, by their presuming they shall not be opposed or punished, on earth, for their wickedness.

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SOME persons have maintained that paternal authority is the source of political authority ; or that the latter is no more than an extension of the former to a greater number of persons. But this notion is plainly wrong. For though, indeed, the former has often given rise to, and been insensibly changed into the latter, yet they are originally things very different in their kinds : for the former extends only to what is necessary to the maintenance and education of the child, and ceases when he comes to years of discretion ; whereas the latter extends to every thing that is justly or truly necessary to the maintenance of civil society, even to the taking away the lives of its members. Now though, as I have said, this latter power is derived from God, yet the particular persons who shall be, at all or at any times, vested with it, as governors of societies, are not nominated, or visibly fixed upon, by him ; and, therefore, he must be supposed to leave it to the acts of mankind who the governors shall be, that shall be invested with this authority from him.

PLATO makes a conclusion of this sort, from observing that kings among men are not, like those among bees, born with marks of distinction among them. From whence, he says, it follows that the consent of men must have been the original of political power. And he gives several instances of governments formed in this way, by the agreement of many families coalescing and joining together [p] ; the politics, and particularly the authority of the princes, were settled by the common consent of the nation. And this must have been the case, no doubt, in many other nations : in which, therefore, the express or supposed consent of the people must have been the origin, and measure, of the right of the governors. As much right as they have derived from the original constitution, or subsequent acts of the societies, over which they are set, so much right and no more they must be supposed to have.

It is true, that free or voluntary consent has not been the only even human source or measure of the sovereign authority. Conquest has been so in many cases. When a nation engages in an unjust war, and is overcome, it falls, by the right of war, into an absolute subjection to

[p] See Legg. lib. i.

its conqueror. And the case of their children is much the same. But there must be some terms of agreement, to submit to peaceably, even in that case, before the state of war can end [q]. However, it seldom happens that a people continues long in that state of subjection. By degrees the prince grants them easier conditions, &c. On the other hand, it often happens that nations, free at first, do give up their liberties in some degree; and when this has been the case, they have not a right to resume them again. For men are obliged to submit to the established policy under which they were born, unless any extraordinary oppression in the prince, or other justifiable circumstances happen, to give them a just opportunity to make better terms for themselves.

IN general it may be affirmed, that the rights of princes and subjects, in the several nations of the world, depend on their transactions one with another; *i. e.* upon compacts, either express or supposed. The particular degrees of authority, vested in the magistrates, by these compacts, are the measures of the rights of the magistrates, and of those of the subjects. According to those measures of right, the magistrates are to be supposed to have their authority from God, and so far they ought to be, unquestionably, in all things obeyed. And it may be right not to resist them, even in some cases when they go beyond those bounds. But then it is not because they have any authority, or for their own sakes, but for the sake of the community. However, it is as true likewise, on the same principles, that when the good of the community may be visibly promoted or secured by resistance, it may then be as justly thought agreeable to the will of the Supreme Being that all necessary resistance should be made.

[q] See Hale's Hist. of Law, p. 76, &c.

TRACT VI.

Of the Dangers that may be incident to the present Establishment, and the Prospect there is of its Continuance.

SECTION I.

Of the Danger that may befall the Ecclesiastical Part of our Establishment, from Papists, Protestant Dissenters, and Infidels.

I HAVE already observed, that all human establishments are liable to some dangers that no human prudence can foresee, and to others that no human power can guard against. If, therefore, I offer some conjectures about the probability of such dangers, and the means of avoiding them, I would be understood to do it, not in a peremptory or positive way, but with a due sense of the uncertainty of all conjectures of this sort.

As our establishment is divided into two general parts, the ecclesiastical and the civil one, so it may be proper to consider, in the first place, the danger to which our ecclesiastical one is exposed, from any of its adversaries, and what probability there is of its subsistence. The most inveterate and most active of its enemies are the papists, both abroad and at home; at the head of whom is the pope, and some other temporal powers, who may to this purpose act in concert with him, and with the papists of this kingdom. I have already observed, that the popish interest on the continent has, for the greater part of these two last centuries, very much increased: and I doubt is likely to do so still farther by some of the German princes being turned papists. They have not indeed, yet, applied themselves much to the conversion of their subjects, but they will probably soon come to do it; as the maxim in Germany is “*cujus est regio, illius est religio.*”

It is true, that at present, there does not seem to be much zeal for any religion, in several courts of the continent: but this may, and probably will, in its turn succeed to the luke-warmness that reigns at present. And there is reason to apprehend, that the indifference in religion, which has of late prevailed in some protestant countries, and their employing so many popish officers and soldiers in their troops, will by degrees contribute to spread popery among the people. And when popery becomes greatly superior, or almost universally prevalent on the continent, the force of example may not a little contribute to increase it among us: for the greater part of mankind are apt to follow the multitude; especially when they are constantly solicited to it, by very great numbers of missionaries among us, who are indefatigable, and skilled in all the arts of application: and, notwithstanding our laws, are suffered to do it without danger, so that they certainly make great numbers of converts every year, and are likely to make more, if irreligion, or deism, should continue to increase among us.

POPERY is a religion very well fitted to prevail upon the lower part of mankind: and these converts, among us, are chiefly among the lower part of the world; and therefore some persons in power think them not worth their attention. They think they can put a stop them when they will; and, indeed, so they may perhaps, if they exert themselves in time. But it ought be considered, that when the lower classes of people become very numerous in a religion, they may possibly draw, or, as it were, force, the upper part of mankind into it. The christian religion was this way propagated; and this is much more practicable in a free nation, where the lower people have votes in choosing the members of the legislature. And if ever there should be a great interest, to this purpose, formed among the low people, there would not be wanting persons of quality of that religion, or of no religion, but pretending to be of that, who would put themselves at their head, and make use of their numbers, zeal, and wealth, to promote thir purpose.

I do not think there is any great danger from this quarter as yet; but I think it far from being impossible or very unlikely; and that, therefore, some care ought to be taken about it. Not that I would, by any means, advise any great rigour to be practised against them:

but they ought to be watched, and a careful and somewhat stricter hand to be held over them, by putting some laws in execution. This is a very justifiable measure; because whoever is converted to that religion becomes a certain enemy to our civil constitution. The numbers of them in every diocese ought to be at proper times returned to the ministers of state: this method would have some effect; and care should, at the same time, be taken, that the clergy should never wholly discontinue their preaching against popery, and that the chaplains, belonging to the land and sea forces, should do their duties: in which, perhaps, for some time past, they have been too negligent. The nobility and gentry ought not to keep any popish servants in their families.

I SHALL hereafter suggest another thing, which will have more effect than any of these; but, as that consideration will be applicable to other matters, I shall forbear to mention it till I come to them. In the mean time I think, that, if proper methods be taken, we are in no great danger from the increase of popery among our people. The protestant religion, while it has the civil establishment on its side, will always be able to maintain itself here. If the church of England subsists, and its bishops and clergy thereby continue to be united, they will always be a sufficient barrier against all the secret practices, and undermining arts, of popery.

BUT will the church of England continue to subsist upon its present foundation, considering that it hath many other adversaries besides the papists to contend with? It hath the Protestant Dissenters of various denominations; it hath the Quakers; and it hath the Deists; and all these are continually undermining it, and may they not succeed? May they not render the bishops and clergy so very unpopular, that they may make strong pushes to take away or much curtail their revenues; and engage the crown itself, as they did in Charles the First's time, to give them up? May they not abolish deans and chapters, and spiritual courts? May they not push at depriving the bishops of their seats in the house of lords, and make them mere moderators, or presidents of the clergy of their dioceses? May they not procure their tithes to be changed into stipends? And will the bishops and clergy, in such a state, be able to do as much as they do now against popery? No, I own that they would not; but I do not conceive that there is any great danger that they will ever be brought

brought to this. For the sectaries themselves are likely to decline in their interest and influence, especially the Presbyterians and Independents. They have been of late much divided among themselves, about particular points of religion, so that it will be difficult for them to act in concert.

THE Quakers are the most likely to subsist; because they have a polity: but that, being founded on enthusiasm, will grow more and more relaxed till it dissolves. But if the dissenters should continue to act together, yet they will not compass the ruin of the established church: because the nobility and gentry will not come into it, and much less the court. They know that the sectaries are, all of them, upon a levelling scheme; and, therefore, though some of the nobility have no great concern for the bishops, or clergy, upon truly religious principles, yet they will be willing to support them as barriers to themselves. Though they may dislike some bishops, at some particular times, yet they may think that others of that character may take different measures. They may perhaps come into pushing bills against translations, or selling of fines; but will hardly go farther, nor will even compass these points. The court will be disposed to protect the clergy, in these particulars: their own interest will lead them to do it; and, when they have reason on their side, they may, if they do not let things go too far, be able to protect the bishops and clergy against all such attempts.

SUPPOSING, therefore, that the civil part of our constitution continues as it is, or that the crown does not decline its power, I do not apprehend any great danger, to the religious or ecclesiastical part of it. Let us then proceed to consider what likelihood there is, that the civil part of the establishment will subsist in its present state.

S E C T. II.

Of the Dangers that may be Incident to the civil Part of this Establishment, from among Ourselves; either, 1st, From the Undue Growth of the Regal Power; or, 2dly, From the Prevalence of the Antimonarchical Party: 3dly, From Foreign Force, taking Advantage of Divisions among Ourselves.

AS to the alterations likely to be made in the civil establishment, by practices among ourselves, I have heard people of very different, and even of contrary, opinions. Some think that the crown is likely to increase its power, so far as even to become absolute; *i. e.* to have all the real power, either without the form of parliaments, or with the form of them only. Others, on the contrary, think that the power of the crown is likely to be retrenched, to such a degree, as to become almost insignificant, or merely nominal.

THE gentlemen who have apprehensions of the former sort, observe that the crown has, at present, so much power, from the greatness of its civil list, by the number of preferments, ecclesiastical, and civil, and military, at its command, that, if proper applications be made on its part, it may, in no long time, have the liberties of the nation entirely in its power: and that, if it should not think fit to alter the outward circumstances of our constitution, it may, by having the parliament in an absolute dependance, do every thing which it desires, as effectually, and less invidiously, than it could by having the power solely in itself.

Now here I will content myself with saying, that I believe the present king and his family have too much probity to desire to take away those liberties of a people, which Providence has given them. But perhaps it may be thought, that this is an argument more proper to silence, than convince: I shall, therefore, endeavour to shew, that it is not supposable that a prince, who is himself of good capacity, and has a
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true judgment in politics, or is advised by ministers of that character, will attempt to make himself absolute in this nation, while the circumstances of it are the same, or in any degree like to what they are at present. My reason for this is, because, from considering the true state and disposition of the people, from high to low, it is not in any degree probable that he should succeed in this attempt, if he was disposed to make it. I do agree that there is at present, as there always has been, in this nation, a set of men who have been disposed to make the crown absolute. But this never was the general bent of the nation: that hath at all times gone the other way. A desire to preserve the great articles of our liberty hath always been predominant in the bulk of the nobility, gentry, and people.

WHENEVER the crown has appeared to make, or been suspected to design, any attempts upon our liberties, the generality of the nation hath discovered a spirit of opposition to it: and has not been quieted, in most cases, till some farther confirmation and security to our liberties hath been granted by the crown. This any one may observe in the whole course of our history, and which, indeed, may be seen from the instances that I have given, in these papers, of the progress of our liberty. But this spirit of liberty and watchfulness, against all attempts of the crown, was never more strong, or more general, or had greater opportunities of exerting itself, than at present. The tenures, with the legal obligations resulting from them, and the penalties upon the breach of them, and the power in the crown upon the education of their wards, had antiently a great influence upon many of the subjects, towards keeping down the spirit of liberty: moreover, there were formerly some principles very much received, and as it were rooted in the minds of a great part of the nation, which, in no small degree, checked and tempered the workings of this spirit. Men were brought up with a notion of the sacred hereditary right of our kings, and of the unlawfulness of resisting their authority, upon any pretence or cause whatsoever.

THESE principles, in the reign of James I, and some of his successors, were instilled into a great part of the people, in their education; and sinking into their minds as undoubted truths, had, though they could not command some, yet a great influence on the conduct of others,
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that the crown will not be likely to get any parliament to give
up any of the great bulwarks of national liberty: though, even if the
parliament should do that, like the parliament summoned by Richard II
at Shrewsbury, yet the crown would not, in consequence of the par-
liament's so doing, have its own absolute power effectually established.

2dly, No parliament will, I believe, be so far influenced as to give
up any of the essential points, or great securities of our liberty; because
the parliament is now composed of gentlemen of estates, who could not
easily have any equivalent for what they or their posterity would suffer
by the loss of public liberty. There are not places enough of value,
in the disposal of the crown, to tempt a sufficient number of them, nor
could the crown well find money enough to make it worth their while;
for it would be selling their birth-right for a mess of pottage.

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PART II.

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and those in great numbers, as well as some of great weight. But, since the Revolution, the vast number of pamphlets written and dispersed through all parts of the nation, and read even by the lowest of the people, and countenanced by the highest, have not only much lessened the influence of these principles, but almost wholly extirpated them out of men's minds. The people have been taught and persuaded to believe, that the laws and liberties of this kingdom are their birth-right. The notions of the universities and the clergy are a good deal changed; and the freedom of the press gives every man opportunity of imparting his thoughts upon this subject to the public.

Now when such a spirit of liberty is diffused through the mass of a nation, especially of one already possessed of laws that fence every great article of liberty, it appears to be impossible that a crown, in the circumstances of our's, should suddenly, or in any little time hereafter, become absolute, without the assistance of foreign force. But if any person thinks, that, by the influence of preferments, the operation of civil officers, and the application of money, the crown may gain parliaments, to such a degree, that they may gain whatever points they desire, not apparently contrary to the national interest, I will not dispute this point with him. The only points that I would insist upon are these: viz.

1st, That the crown will not be likely to get any parliament to give up any of the great bulwarks of national liberty: though, even if the parliament should do that, like the parliament summoned by Richard II at Shrewsbury, yet the crown would not, in consequence of the parliament's so doing, have its own absolute power effectually established.

2^{dly}, No parliament will, I believe, be so far influenced as to give up any of the essential points, or great securities of our liberty; because the parliament is now composed of gentlemen of estates, who could not easily have any equivalent for what they or their posterity would suffer by the loss of public liberty. There are not places enough of value, in the disposal of the crown, to tempt a sufficient number of them, nor could the crown well find money enough to make it worth their while; for it would be selling their birth-right for a mess of pottage.

3^{dly}, THEY would recoil at the thoughts of so deeply injuring their posterity and their countrymen; even if they could do it with safety.

But, moreover, they would not only fear to be reproached and laid aside, for the future, by the people, but might also expect that such laws against the plain interest of the people would not be submitted to. The nation are now generally come to look upon the house of commons as empowered to act for the benefit, but not for the ruine or great mischief, of their constituents; and, therefore, if they should act plainly to the public mischief, they would reckon their actings illegal, and even null in themselves. Their authority would be lost: they would be only considered as five or six hundred men, and even the most profligate of men. The Senate of Capua was so; and so was the Cortes, at the Groyne, in Charles the Fifth's time: and thus was our Rump parliament. The nation would think themselves at liberty to disavow what they had done, and would certainly chuse persons who would resolve to retrieve and annul it; and would probably refuse to submit.

HENCE, therefore, a parliament will hardly venture to act openly and avowedly against the interest and liberty of the people. And the interest of the nation is now so well understood, that the parliament cannot think of imposing upon it, in any thing which is much against the public service. Formerly, this might be somewhat more practicable; before printing was found out, or when nothing of state matters could be printed, but what was licensed by the government: but now any person is at liberty to print what he thinks fit, so he observes proper decency and caution.

PERHAPS it will be said, that the crown has a very considerable body of standing troops, sufficient to intimidate the people, and prevent any insurrection or actings, on their part, in opposition to what the parliament shall do, and that this body of troops might easily be augmented. I grant they may; but, if they should be augmented, they would hardly be sufficient to make the crown absolute, because they would not stand by it: indeed the Lord Clifford, in Charles the Second's time, told a person of quality, in private discourse, that the king, if he would be firm to himself, might settle what religion he pleased in this kingdom; and carry the government to what height he would. For if men were but assured in the liberty of their consciences, and undisturbed in their properties; and able and upright judges made in Westmin-

ster-hall: and if, on the other hand, the fort of Tilbury was finished to bridle the city, the fort of Plymouth to secure the west, and arms for 20,000 men in each of these, and in Hull for the northern parts; with some addition, which might be easily and undiscernedly made, to the forces on foot; there were none who would have either will, opportunity, or power to resist [a].

SIR William Temple, on the other hand, who was a very good statesman, and a good friend both to the crown and to his country, was of a different opinion. "I shewed," says he, in his Memoirs, "how difficult it was, if not impossible, to set up here the same religion or government that was in France: that many, who were perhaps indifferent enough in matters of religion, considered it could not be changed here but by an army; and that the same force that made the king master of their religion, made him master of their liberties and fortunes too. That the kings of England have no means to raise or keep armies on foot, but by supplies from their parliament, nor revenues to maintain foreign wars by other ways. That if they had an army on foot, yet, if it was composed of English, they would never serve ends that the people hated or feared. That the force seeming necessary to subdue the liberties and spirits of this nation, could not be esteemed less than an army of 60,000 men: since the Romans were forced to keep twelve legions for that purpose; the Normans to institute 60,215 knights-fees; and Cromwell left an army of near 80,000 men."

A LATER author, of good skill in such matters, says he does not imagine that an army will be employed by these men (*i. e.* corrupt ministers of the crown) directly, and at first, against the nation and national liberty. I am far from thinking that any men can arise, in future times, capable of attempting in this manner, what some men, in our age, who call themselves friends to the government, have been so weak and so imprudent as to aver in print and publish to the nation. To destroy British liberties with an army of Britons is not so sure a measure as some people may believe [b]. And the same author, in another place, says,

[a] Rapin, vol. ii. p. 662.

[b] Dissert. on Parties, p. 116.

it will appear, upon due consideration, that our liberty cannot be taken away, unless the people themselves are accomplices [c]. If this should happen to be our unfortunate condition, the people, in general, will, most certainly make a struggle for the preservation of our antient constitution. This will undoubtedly be the case; and when it is, I hope those who shall bring us under such afflicting circumstances will find, that even an army of 60,000 men will not be able to stand against the whole people of England.

4thly, THERE is no appearance that the standing troops, composed as they are, and will always be, of officers and soldiers of our own nation, would all stand by the crown in attempts to destroy the constitution. The officers, being many of them men of property and honour, would not care to lose their liberties: and the soldiers, by often mixing with the bulk of the people, would take sentiments and impressions from them. Tarquin the Proud left an example to all future tyrants, that an army of freeholders will always turn their swords against their oppressors, whenever an opportunity presents itself. The decemvirs of Rome experienced this; their army turned against them. They were at first restrained by their military oath; but they got above that scruple, by considering, that the decemvirate was then an usurped illegal power. There were some that remained with the decemvirs; but the greatest part of the army took up their ensigns, marched to Rome, and concurred with the people in abolishing the decemvirate [d]. This was the case in King Charles the First's army, when marching against the Scots, in 1640. Nothing could alter the opinion and humours of the officers and private soldiers of his majesty's army; who, in their march, did not spare to give their judgments against this war, particularly that they would not fight to maintain the power and pride of the bishops [e].

LUDLOW, in his Memoirs, tells us, that the parliament army, in the latter part of Charles the First's time, would not be employed in levying illegal taxes upon the people, though the money was for their own pay. And the like disposition appeared in the army in King James the

[c] Dissert. p. 145.

[d] Dionys. Hal. lib. xi. p. 722, 723.

[e] Echard's Hist. vol. ii. p. 175.

Second's time. Religion, indeed, was then concerned in the question; but if it had not, yet attempts upon civil liberty only would probably have had a like influence upon them; and so it would upon our army now. And I make no doubt but that the gentlemen of the army would behave as their predecessors did at the Revolution; and that most of them would soon be found on the people's side of the question.

THESE are considerations too evident to escape the discernment of the crown and its ministers: and, on that account, one may well conclude that there will be no attempts of this kind made while the nation is in this disposition. If a political prince should ever have such a design, he will, no doubt, think it necessary, first, to damp, or extinguish, as far as possible, this spirit of liberty, in the bulk of the nation. But this work would be very difficult to be accomplished, if it could be done at all, without a great deal of time, or very violent methods. Some think it may be done, by introducing luxury, and, in consequence of it, corruption; for it was so at Rome about the end of their commonwealth: they say, the wealth brought by the great men from Asia, Gaul, &c. was made use of, by them, to bribe the people, and make them give up their liberties. Now it is certain that corruption had no small share in this effect; but they who make the ruin of that commonwealth wholly owing to corruption, do not seem to understand the true state of it: there were other causes, as well as that, which contributed to its ruin. There had been always two opposite parties; the nobles, and the people. The latter was, in itself, much inclined to Cæsar. There had been precedents, in favour of Pompey and others, of dispensing with the laws: and, by these, Cæsar obtained so long a command in Gaul, that he got a very great interest in his soldiers: and his victories, rather than the will of the people, ruined the commonwealth.

BUT here in England there is no apparent probability of any thing like this. The crown is not likely to be possessed of any such wealth, or such opportunities of making a body of troops be so attached to itself. And, without any prospect of success, it will hardly attempt to corrupt the mass of the people, or the army. As to the former, it could never succeed; it would only exasperate those who were not gained, and make those unfaithful that were. And if the nation saw that there were applications

plications of that sort made to the army, with any prospect of success, they would soon make application to parliament to have them disbanded. From all these considerations laid together, I take it to be impracticable for the crown of this nation, at least in a long tract of time, to subvert our liberties: and, for this reason, I persuade myself that it will not be attempted. I really believe, the crown will not be disposed to do more than to conserve the prerogatives it has at present, or obtain such points as it may gain without giving much umbrage to the people: especially as there are those, on the other side of the water, that would sufficiently improve, to their advantage, any false steps that should be made of that nature.

But, on the other hand, some people are much in doubt, whether the crown will be able to do so much as this. They are full of the apprehensions, as I have already observed, that the republican spirit will by degrees prevail against the prerogatives of the crown, till at length it will be brought down to be almost only nominal, or perhaps quite laid aside. And they pretend to have surer grounds for this opinion than are usually to be had in political matters. They observe, that the ablest writers of politics have thought it demonstrable, that, whenever the balance of property is on the side of the people against the crown, a government must then sink by degrees, from a monarchy to a democracy. They observe that this was actually the case in most, if not at all the trading cities of antiquity: though they were monarchies at first, yet the people continually gained upon them, till they had established the democratical form of government. The balance of property, in England, is now considerably on the side of the people: and the commonalty, in this nation, have been gaining ground these two hundred years. There is a great change for the advantage and power of the cities and towns in the article of taxes: antiently, the cities and towns, when taxes were granted, usually, if not always, gave one third more than the nobility and country gentry; at present, many of the inhabitants of the towns are charged hardly any thing to the land-tax; and even cheat the crown in the customs, &c. while the gentry are under the burden not only of the land-tax, but pay the chief weight of the customs.

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THEY farther observe, that it is of great weight towards carrying us into a republic, that the city of London, which generally has been, and will be, against the court, and will incline naturally to a republic, has a vast influence upon the rest of the kingdom, by its trade and correspondence; and that it must propagate such republican principles amongst the gentry, by its mercantile families purchasing great estates, and yet retaining their old popular principles and inclinations, as will greatly incline the country gentlemen to be of the same principles. That the three great trading companies, though they may be, at some particular times, in the interest of government, or an administration, yet are in themselves, and in the natural course of things, independent bodies of great power and interest, naturally inclined to the republican spirit. That the people are so fenced with laws that the crown can do nothing against them. That they can chuse a parliament at any time, which may grievously hamper the crown; and, by denying the necessary yearly supplies for the service of the government, can oblige it to pass what bills they please. That, at the beginning of any reign, the parliament can either lessen the civil list, or grant it only for a time, and so make the crown quite dependent. Persons of eminence among the whigs have declared it as their sense, that this ought be done: that the general body of the dissenters from the church of England have been always inclinable to these republican notions, and have made them greatly increase and spread through the kingdom; so that it is not improbable but that, if discontents with the conduct of the crown should run very high, the malcontents may chuse a house of commons to their own humour; and then the other points would be, without much difficulty, carried against the crown.

THIS has been the language of many of our tory politicians; and I cannot but acknowledge that there is considerable weight in these considerations: but not quite so much as these gentlemen imagine. For, first, "*potestas radicatur in voluntatibus hominum.*" And though, indeed, where property is, there will be always great means of gaining and securing these voluntates; yet in some cases that circumstance may not be sufficient. It was not so, for instance, in Athens, in the
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time of Solon; nor in Rome, about Cicero's time; when it was said publicly, by the tribune Philippus, and contradicted, that there were not of all the citizens of Rome, above two thousand who had any considerable share of property. Perhaps this may not be exactly true; but it is certain that the property was then chiefly vested in the senators and some other few hands: yet, notwithstanding, it appeared in the event, that these masters of the property could not govern the rest of the people. These latter, on the contrary, were the instruments used to overturn the government, and ruin those in whose hands the property was. The common people, among the Switzers, rose against the nobility, and banished them all, A. D. 1260 [f].

THESE, and many other instances that might be produced, are of force to shew that the voluntates of a nation may not always be carried to that side where there is an over-balance of property; and there is a reason to hope that they will not be so in this nation; because men will generally be for their real interest, if they know it. And it is really the interest of this nation to preserve the present constitution as it is, rather than to change it for such republican visionary schemes of government, either aristocratical or democratical, as some people would be for introducing; since these would be very likely, if not certain, in the end, to throw things into confusion, or pave the way for the pretender. For these reasons, I think it morally certain, that the republican scheme will never be embraced, by any number of the nobility or the antient gentry of landed estates: perhaps some of these may so far misjudge of the interest of their order as to give in, at first, with such schemes; but they will always stand by the crown, with which their own interest and privileges are, in a great measure, bound up. These privileges are already fallen to a prodigious degree from what they were. There have been times when they governed all the countries round them, and were treated with the utmost respect by the gentry, much more by the common people. At present they have very little influence, and as little regard paid to them; and they must grow still much lower, as their estates de-

[f] See Puffendorf, *Introduct.* 404.

cline, and their interests in the nation with them, unless they support the crown, and are supported by it.

THE case will be the same with the greater part of the established clergy; whose education and principles, as well as their interest, will always dispose them to be for the crown, if they are tolerably well used by it. Because they must know that a republic will always infer a parity of preferment, or somewhat near it; and that most of those who are for such republican notions are professed adversaries to the clergy. They will, therefore, stick close to the crown, and will endeavour to gain the people to their side: and generally they will be able to effect it; because the people of this nation have, for the most part, a strong prejudice in favour of monarchical government, under which their ancestors have lived and been happy for so many ages. Now the power the crown has by the constitution, with the support of the nobility, the gentry, and clergy, it may be hoped, will be always sufficient to support it against any attempts of the republicans.

BUT perhaps it may be said, that however the civil constitution might be likely to be maintained among ourselves, if all were well affected to it, yet the case may be very different in the present disposition of the nation. There are very great numbers of the people disaffected to the present royal family, and greatly attached to the abdicated one. This spirit, which has always remained in the nation since the Revolution in 1688, does not seem to decrease; and if it should be fomented and supported, as it is likely to be, by France, it may be attended with dangerous consequences: and still more so if a foreign force should be poured in upon us at the same time; by which many other nations have had their constitutions ruined; and may we not be surprized by a foreign power as well as other nations, when we are at variance among ourselves? Without doubt we may, notwithstanding the advantage of our insular situation: we have already suffered by this means, and may so again. Though Spain, the most formidable enemy this nation formerly had, be now so much reduced, that we need have no fear from that quarter; yet there is another very formidable power, I mean France, still remaining.

maining. That kingdom has a very great union within itself, and the people have a great reverence for their king. They have great materials for trade, and therefore are sure of great wealth, which the king can command in what proportions he pleases. The noblesse, who have most of them commands in the army, are fond of war; and would be so particularly of a war against England, to which they have an inveterate national animosity.

AND farther, besides the advantages that kingdom has within itself, they have at present other great ones from without. The house of Austria, which is the natural balance against France, is rendered much less powerful in the empire, by the growth of power in Prussia. But, what is still more in her favour, Spain is in the hands of a prince of the royal blood of France, and is therefore likely to act in concert with her, by giving her advantage in commerce, and by arming in conjunction with her against the house of Austria, their common enemy. This was formerly the case with the two branches of the house of Austria, when the one of them had the Empire, and the other had Spain; the latter, by Spinola, drove the king of Bohemia out of the Palatinate in favour of the other. And this may be the more likely to be the case between the two branches of the house of Bourbon, because Spain has views of making great establishments in Italy; in order to which France may be of great service to her, by giving diversion to the forces of the house of Austria. Spain has also, most undoubtedly, views upon Portugal, in which France may help her; and so engage her to the like good offices. Now, if France and Spain join heartily together, what power will be able to resist them? Having all the wealth of the Indies at their disposal, will they not soon bring Holland into their dependance? And will they not by this means, not only engross the greatest part of the trade of Europe, but also greatly increase their naval power? Will not this enable them to be our superiors at sea? And must we not then lie wholly exposed them?

IN answer to these questions, I do acknowledge, that some of the circumstances here mentioned may justly render the house of Bourbon formidable to the rest of Europe, and may probably inspire

the French with those views of universal monarchy, in this age, which Spain appears to have had about two ages ago. The bishop of Nismes, in a speech made to the king of France, 17th of September, 1730, when the assembly of the clergy took leave of his majesty, said, "That the happy fruitfulness of the queen confirms more and more the tranquillity of Europe, and prepares, in your blood, immortal supports for the church, and perhaps sovereigns for the universe."

BUT there is great reason to hope, that others of these circumstances, in favour of France, will not hold good, but that there will be always some power in Europe to keep her at a bay. For, in the first place, there is reason to hope, that the union and concert between France and Spain will not long subsist: although there be a prince of the blood of France upon the throne of Spain, yet the geniuses of the two nations differ very widely, and will still continue to do so. And as it is the true natural interest of Spain to continue independent of France, so it is to be hoped that the grandees of that kingdom and even the people in general will see it; and at the same time will see that France may easily grow too powerful for them. When a branch of the house of Austria was on the throne of Spain, there was no room for this jealousy, with regard to the other branch on the Imperial throne. But there may be always room for the Spaniards to fear, that, if France grows too powerful, she may have designs upon Spain, which it would be visibly her interest in several respects to pursue: and Spain might be thereby reduced to be a province of France. And if so, then it must be the true politique of Spain, not to encourage, or even permit, the too great growth of France; especially not to let it over-run Holland, but rather to join with the confederates, in making an opposition to it. This Spain did formerly: and when the force of consanguinity decays, as it will soon do, between the royal families of France and Spain, then the natural interests of their kingdoms will take place, and make both those courts act according to them.

As to the empire, no doubt can be made but that the electors and other princes of it will have so much regard to their own interest, as to support an interest in the house of Austria, by uniting its hereditary

ditary dominions in some one person to the Imperial power; which union is the only apparent means of defending them against the power of France on one side, and against the Turks on the other. As that kingdom has pretensions upon the empire, and upon the dominions of several princes in it, ever since the time of Charlemaign, it sure cannot be the interest of those princes to chuse any one emperor who is at all attached to that crown. We may be certain, that, if there be no force upon them, they will never do it. France indeed may influence the electors upon the Rhine; but the others will never come into these measures. It may be hoped then that the Empire, Great-Britain, Spain, Holland, and Savoy, will be always able in confederacy to be more than a balance for the power of France. I am well aware, indeed, how hard it is to form confederacies, or to make them act effectually together: a kingdom of great force, united in itself, will always have vast advantages against them. And I am farther aware, that if God should see fit to take away the lives of the present king of France, the Dauphin, and his children, the people of that kingdom would, in all appearance, call the king of Spain, or the eldest infant of that kingdom, who would be nearest in blood, to the throne of France: so that, in that case, the kingdoms would certainly come to be united: it is the interest of the people of France to do it. And besides, they are so greatly attached to make their crown descend according to proximity of blood, that they would certainly do it. And in that case, I do think indeed that we, as well as the rest of Europe, should be in great danger. For France and Spain would engross most of the trade and wealth of Europe; and from thence would be able to command at sea, and consequently might invade us whenever they would, with great prospect of success. For this island, having no strong places, and having London, its great seat of wealth, unfortified, would certainly be in danger of an invasion, in case we should lose the superiority of the sea: hence, therefore, will appear the great advantage of having a national militia.

But at present we are tolerably well secured against the fear of seeing France and Spain under one prince. The king of France is a good life; the Dauphin is likely to live to a good age, and has a nu-

merous issue; and therefore we have no great reason to apprehend being subdued, by any efforts the former alone, or any other power now in Europe, can make. If we manage our national strength rightly, and make a proper use of the advantage of our situation, and keep our trade, and consequently our naval force, we shall always be able to have a fleet equal at least to any that France can put to sea. We may put our militia upon such a foot as to oppose any foreign army: besides, it is almost impossible for them to transport a body of troops sufficient to make a conquest of this island, if united in ourselves: even the Spanish Armada would not have done it. The fear of being unable to supply or recruit their troops, even when they are here, will hinder the French from attempting it, unless they are first absolute masters of the sea.

HONORIUS, who wrote in Queen Elizabeth's time, and was a great friend to the crown of Spain, says of England, that "*regnum illud Angliæ validum adeo remansit adhuc ut nullius egeat ad sui tutelam: quinimo non modo difficile et arduum, sed etiam penitus impossibile est, nisi regnum illud diffidia nutriet vi, illud expugnare [g].*" And the duke of Rohan, speaking of England, said, "*Angleterre est un grand animal, qui ne peut mourir, s'il ne se tue lui-même.*" France, therefore, will hardly ever be disposed to attempt an invasion upon Great Britain, unless she sees us greatly and violently divided among ourselves. If we can but preserve a due union of hearts and affections among our countrymen, in defence of our constitution, and of this establishment, we may hope it may be secure from any thing that foreign force can do against it.

BUT, it may be asked, Are we likely to preserve peace long among ourselves? have we not had intestine wars and commotions almost once in every century since the Norman conquest? have not these produced national revolutions, with the assistance but of a small body of foreign forces? and may we not fear the like may be done again, from the dispositions of the parties among us who succeed to those formerly? To these questions I answer, first, that it was much easier formerly,

than it is at present, to make revolutions. There were then a great number of peers, of very large estates and interest, whose tenants were strongly attached to them, both by law and by advantage, and who, by means of these tenants, could soon raise and arm a formidable body of men; and so could make a stand till they could be assisted by foreign troops. By such persons the commotions were made here for two or three centuries after the Conquest, and sometimes carried on to revolutions. But even then, this could not be done without taking advantage of great national grievances, in King John's time, in Edward the Second's, in Richard the Second's, and in Richard the Third's time: and if we come down lower to Charles the First's and James the Second's reigns, we all know that the grievances, in the former part of the first of these reigns, were very great; and that those in his son James the Second's reign were yet much more so.

THE only prince in England dethroned without much fault in himself was Henry VI; he was a pious and well-meaning prince, and not inclined to aggrieve his people in any respect. But then he was also a very weak prince; and was in the hands of his ministers, who were both very ill managers and very unsuccessful; and who lost the honour of the nation. He was yet more governed by his queen, a haughty imperious woman of the house of France, who practised great violences, in several respects, especially against the duke of Gloucester, whom she caused to be murdered. These violences, and the great ill success of this reign, set the people against the king: and besides he had the disadvantage of having a prince in his family, I mean the duke of York, who had the true hereditary right; who was a prince of great spirit, and other great abilities; and who had a large party of the people and several noblemen, of great power, on his side.

At present, the condition of this nation is very different in most of these circumstances. We have but few noblemen capable of raising many forces: their interest in their tenants at rack rent is very small; and at present the power of the laws is so great and equal, that they cannot do any thing against them by violence; so that they have not much influence upon them from fear any more than love. Nor are we likely to have any great grievances put upon the nation, on the part of the

crown. For as to its enterprizing upon the civil liberties of the people, I have shewn that such a thing is not likely to be done : and yet less likely is it that it should be disposed to do it in religious matters. Neither the king nor any of his family are of such a temper that they are likely to break in upon the toleration : they will allow, in all appearance, a full religious liberty to all the sectaries, to worship God in their own way. And it is still less likely that they will break in upon the ecclesiastical establishment of this nation, or hurt the interests of the church of England ; because it is visible that no establishment could well be formed more proper to support, and promote, the interests of the crown, than the present one is.

THERE is some reason to judge, that most of those who are against the hierarchy are also republicans in their hearts ; and that this part of the constitution can never be violated without raising discontents in a great part of the nation. For these reasons, though some people may be for advising attacks upon the church, yet it is not probable that the crown will go in with them, or in any degree encourage them. For the whole interest of the sectaries is not considerable, when put in opposition to the church of England. They are, indeed, so far considerable as that, when they are all joined together, they may endanger the church of England ; and, as they would certainly join together, upon any opportunity to that purpose, it is therefore highly necessary that they should be guarded against, and such an union prevented. But they could not be a bottom for the crown to depend upon in any measure ; because they never could unite in any scheme to support a ministry, or the interest of the crown, as they themselves have different interests : this is evident from their behaviour in Oliver Cromwell's, and his son's time. It is true, that, by this union with each other, they have a great weight in elections for members of parliament, and this has engaged ministers of state so far in their behalf, on some occasions : especially the Quakers, who have gained some points, and increased, by this means. But this will engage all able ministers to have a more watchful eye over them for the future, because their maxims are all republican. And if the crown does not encourage them, but rather makes it a maxim to promote only

only persons well affected to the church establishment; and, at the same time, lets the sectaries alone in peace; they will, by degrees, fall away of themselves: and, since their differences are trifles, our posterity, it is to be hoped, will come to an uniformity in religion.

Now attempts upon either religious or civil liberties are almost the only things, by which the subjects of this nation will be so much discontented, as to be from thence disposed to act against the present establishment. Ill success in war abroad, or great decay in the wealth of the nation at home, may, indeed in some circumstances must, disturb the nation. For our people, who have been generally used to prosperous fortune in war, would be too apt to lay the fault of the contrary upon their princes: and thereupon be full of resentment, if there was any gross misconduct in the prince on the throne, or in his ministers. And they would perhaps be in the like disposition, if trade was to decay very greatly; and that they could lay it remarkably to want of good management, or to design, in the crown. But this latter case is not likely ever to happen, at least not for any long time together: for the crown will hardly ever endeavour to hinder trade, but rather to promote it; because, even with regard to the produce of the customs applied to the civil list, it is its interest so to do, as well as to make the people easy in their fortunes. The only thing that can be imagined to put the crown upon measures that will hurt trade, will be, if there should be a ministry that, conscious to themselves of their having lost the interest of the people, and that, unsupported by any persons of ability to manage in times of distress, should therefore be afraid of a war, and should accordingly submit to any measures to keep it off; and, by this means, be forced to overlook any depredations upon our trade, though accompanied with the most outrageous insolence. If this should at any time happen, probably the trading interest, and the bulk of the people, would express a proper resentment. And if ill success should happen in such a war, they would impute it to the crown: but otherwise, if ill success should happen in a just war, without any fault of the prince, it would not be very difficult to make the people easy; at least by sacrificing a minister, or general, grown unpopular.

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THE only thing that would, with any probability, have much effect towards the subversion of the present establishment would be, if any of our kings should so far profess to attach himself to a small number of his subjects, as to not only neglect the rest, but exclude them from all hopes of ever enjoying his favour. As, by being considered as his enemies, it might make many of them become so in good earnest; and, if they were popular, they might gain such an interest among the people as to be able to raise great disturbances. But there is no appearance that this will ever happen to the present family, who are of good judgment, and have all had opportunities enough of knowing the genius of the nation: and unless a king was to do it very remarkably indeed, the heads of such a party will hardly be induced to carry things to extremities. Their regard to their interest in the funds, and to their religion and liberty, would make them bear a long time, and endeavour to gain a king's good graces; and when a prince sees them supported by the majority of the nation, he will endeavour to bring things to an accommodation. Upon the whole, therefore, though there may be contests about the means and persons fit to serve the public, it is reasonable to think they will hardly go so high as to destroy the constitution.

THE fear of losing the abbey lands would also be a great inducement to the persons concerned in them, to stand by the present establishment. Indeed, in James the Second's reign, there was a treatise published by Doctor Johnston, to make the present possessors believe that they should be secured in the possession of them, even though popery should come in. But Bishop Burnet, and some other authors, have given reasons to think that this was not designed to be the case. It is true, the pope, in the reign of Mary I, did by his bull allow the possessors of the abbey lands to keep them; but any other pope may rescind his predecessors acts, as they have frequently done, and may lay claim to those lands, if he thinks that there is a favourable opportunity for making good his claim. So that there may be reasonable grounds to hope that our present establishment may be of long continuance.

S E C T. III.

Of the Means to guard against these Dangers: (viz.) 1st, By Frugality; 2dly, By a due Respect to the Laws and Magistrates; and 3dly, By a hearty Concern for, and public Practice of Religion.

CONSIDERING that there are circumstances, both from without and from within, of no small weight against our present establishment, it is certainly very desirable and reasonable that all due and practicable measures should be taken to ward against dangers of every kind, at least those of the greatest moment, that may be incident to it. And to this purpose, it will be highly expedient that endeavours should be used to introduce, as far as may be, among the mass of the people, 1st, A more frugal way of living; 2dly, A due respect to the laws and magistrates; 3dly, A hearty concern for, and public practice of religion.

THE first thing that ought to be introduced, as much as possible, into the mass of the people, is a frugal way of living, within their income, whatever it be. National frugality is the best support to a state; for “*vestigal optimum est parsimonia.*” It will make people pay cheerfully to the public charges; whereas, when they live beyond their income, they must be grievously pinched with them, and will always be disposed to murmur at these public taxes. And when their luxury &c. has deeply encumbered them, and almost consumed their fortunes, they will be always apt to be discontented with the present state of affairs, and ready to engage in any designs to raise commotions. This the Romans found by experience, in the decline of their commonwealth: they had been antiently careful to prevent too great expence, by sumptuary laws, about eating, equipage, and many other things. But when those laws were repealed, and luxury increasing without controul, and the fortunes of many of their citizens came to be ruined, they soon were disposed to make an attempt upon the liberties of their

country, in order to mend their private circumstances; this was the case of Catiline's conspirators, and of the civil wars.

IN England, indeed, luxury never was at so great a height formerly, or at least, if it was great among the people of quality, it was never so generally spread among the people as to give ground for much apprehensions of this kind. Yet our ancestors thought it proper, by several laws, to prevent too great expence, in some points, especially in that of habits among the people. There were laws appointing what sort of cloths each rank of men might wear: and Queen Elizabeth made a strict law to prevent men's running in debt for some sort of cloths. And it was certainly a weakness in King James I, to suffer them all to be repealed. If they had continued in force to this day, with proper emendations, and others had been added to them, the nation would have been upon a much better foot than it is: we should not see worthless persons in laced habits and coaches and fix, while the antient gentry, by straining to do the same, ruin their fortunes. Perhaps it will be thought, that regulations of this sort must always be disadvantageous to trade: and it is true, they will be so to some branches of it; but then those branches of trade are disadvantageous to the nation, and tend to its impoverishment. Such a one is our trade with France and Flanders at present, in which the balance runs at least 1,000,000 £. per ann. against us. In general, all trade is disadvantageous, which has this circumstance of the balance against us: indeed it is wrong, that, even of the national product, people should spend so much as to exceed their incomes; for this must tend to impoverish the nobility and gentry. But perhaps it may be thought, that this will be of no ill consequence, because the wealth, while kept in the nation, will only change hands, and the public will not suffer. But this is a mistake; for families of antient extraction and quality, though they grow poor, will always preserve somewhat of their high spirit: they must live, in some degree, suitable to their birth and family; and, if they cannot do it, will be apt to forward any disturbances, in which they may find their account. And, therefore, care ought to be taken to lessen the national consumption; and, by obliging men to make expence only suitable to their conditions, occasion their living within their fortunes.

If this regulation was carried into execution, it would also contribute to the second thing which I mentioned as necessary to preserve the tranquillity of our happy constitution; (viz.) to recover and preserve, among the mass of the people, a due regard for the laws and magistrates. This is one of the principal grounds of peace and happiness in a society. The antient politicians, therefore, applied themselves chiefly to cultivate it; and they succeeded wonderfully well. The Spartans and the Romans had the greatest reverence for their magistrates; which continued all the flourishing times of their republics: and soon after it was sunk, they declined. Among us, things are certainly come to a very bad pass in this way: the reverence for the laws is in a great measure lost: the low people have no concern about the laws, if they can possibly evade them, especially in the practice of smuggling; and I am sorry to say, that they are too much countenanced in this practice by many of our nobility and gentry. The elections of members of parliament; the constant resort to London; and the talking so much of liberty, have made the low people run into all kinds of licentiousness and rudeness. Plato, *De Rep.* p. 722. speaks of some cities that may be so thirsty of liberty as to be drunk with it, when they have corrupt drawers that are orators. This, indeed, is much the case among us; and is certainly a circumstance from which no small evils may be apprehended. There have been times in this nation, and others, when the low people have risen upon the nobility and gentry: and as they have the strength, and this nation are so well fenced with liberties, one does not know what this humour, if it increases in this nation, will produce. It is therefore of great importance to stop it as much as possible; and to recover a due respect for order, for persons of rank, and for the laws; which is the great foundation of all government; that so the low people may be governed by authority, or impressions of respect, which is the natural method, and that there may be no occasion for force to that purpose.

But 3dly, It is also of the greatest moment to retrieve a concern for religion. This all the politicians of Greece and Rome have agreed to be highly necessary to the well-being of Societies; and, therefore, they not only endeavoured to encourage it, as much as they

could, but would not suffer the sophists, or players, or the like, by their disputes, to unsettle the minds of their people. Plato advises great care to be taken in this point: and when afterwards the Greeks gave more into sophistical learning, and the minds of the people came to be corrupted with irreligion, their practice came to be suitably bad. Polybius remarks this, and commends the Romans for their care in keeping up a spirit of religion, and shews the advantage they found from it: he also foretold the ill consequences that would arise from their neglect of it. These actually happened not long after, as we find from Livy; and contributed greatly to the ruin of that state.

THE people of England were, in most of the former ages, distinguished for their regard to religion; but at present it must be owned with concern, that the case is sadly altered: hardly the appearances of it are preserved. The many infidel books that have been published of late have almost quite destroyed it, as it happened among the Greeks: and the consequence is, that even morality is gone with it: this must render the people harder to be governed; and it must especially make them sit loose to the protestant religion, which is the great ground and security to this establishment. It is without doubt therefore of great importance, that this matter should be taken care of; and, as far as possible, the spirit and practice of religion should be revived.

BUT how will this, or the other things here mentioned, be effected? Indeed, I fear, not easily or soon. Yet certainly some methods may be found that will be of service: and one would hope that the wisdom of our legislature, who are the most proper for that purpose, will turn their thoughts on them. In the mean time, I will venture to say, that there is one method, which would be the most effectual of all others, and that is the example of persons of quality. Tully observes how effectual this is; and indeed the Roman state, among others, had a remarkable instance of it: from a rough and barbarous kind of people, a sort of banditti, as they were at first, they soon became greatly public-spirited, self-denying, &c. How was this change wrought? was it by the poverty, roughness, or simplicity of those times? No: other nations have been as rough, and have had as little wealth, and yet

yet have not had so much public spirit. The true cause was the example of some few great men, as Tully and Sallust observe: and the like effects, though not in so eminent a degree, have been wrought in some other states. I will not affirm, that, in the present age and in our nation, the examples of people of quality would have quite so great an effect; but it would, undoubtedly, have a very considerable one. If a small number of persons of rank and estates would but, for instance, appear at church constantly, with an air of seriousness; and would, in their public conversation, express some belief and concern for the truths of religion, &c. the middle and lower people would soon follow them; the infidels would be out of countenance; and their tracts be despised. In like manner, if they would endeavour to discountenance licentiousness; shew a regard to the laws, &c. they would soon be followed by others. By practising self-denial and public conduct, they might diffuse the same kind of spirit all round them; as the senators of Rome did when they contributed to the Punic war: especially, if they would take care to give a good education to their children, and make early impressions on their minds, with regard to these and other points. But, it may be asked, Is it likely, that these examples will be given by the people of quality in such numbers as will be any way effectual? To this I can only say, that I know some, of whom there may be some hopes of this kind; and that all in general have more inducement to do it, than they have had perhaps in any other nation, or among ourselves in any other age: for the chief inducements to such conduct have been either the desire of preserving good politics to their descendants, the views of applause here, or the hope of rewards hereafter.

Now as to the first of these, I have shewn that hardly ever any equalled, and none exceeded ours: and if the nobility have any regard for their families, they ought to be most particularly concerned to take this method for preserving the establishment; for, if it comes to fail, it will probably first fail in that part which regards the nobility.

As to the second inducement, they may not perhaps, in this age and nation, meet with so much applause, as they might in some others formerly: but still there never will be wanting a great degree of applause to be given to good and public-spirited actions.

As to the last inducement, viz. the hopes of reward in another life, our nobility have certainly more reasons to expect it than any of the heathens ever had; whose views of this kind were so uncertain, that, though Tully represents Scipio as being much moved by them, yet, at some other times, he speaks, as Plato had done before him, with a great deal of diffidence. And neither Demosthenes, nor any of the great Athenian orators, do at all mention them in those harangues they made to encourage public spirit, &c.

With us at present that matter is sufficiently clear and certain: we know that all sorts of virtue, and therefore, no doubt, public spirit, which is the highest of the social ones, will meet with a great and eternal reward, if a bar is not put to it by other vices that accompany it. If a man is at once a good patriot and a good Christian, he may justly hope for an eternal reward.

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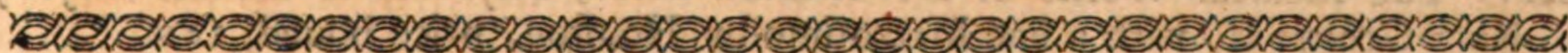
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